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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1263.

THE RICHMOND AND WEST POINT TERMINAL RAILWAY AND WAREHOUSE COMPANY, APPELLANT,

vs.

NICHOLAS THOURON, FREDERICK J. BURT, TRADING AS FREDERICK BURT & CO.; WILLIAM J. BARR, EDMUND ALLEN, AND EDMUND P. DWIGHT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

FILED OCTOBER 1, 1889.

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1 *Part of Transcript from Chancery Court of Knox County, Tennessee. Filed April* 1, 1889. *H. H. Taylor, Clerk, by J. T. Carter, D. C.*

Answer of East Tenn., Va. & Ga. R'y Co.

In the Chancery Court, Knoxville, Tennessee.

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y CO. *et al.* } # 4417.

To the Honorable Henry R. Gibson, chancellor:

Answer of the East Tennessee, Virginia & Georgia R'y Co., one of the defendants herein, and without waiving all or any of the exceptions it may have to the many and manifest errors in complainant's bill contained, for answer to so much thereof as it is advised it is necessary to make answer unto says:

First. This defendant has not sufficient information whereon to found a belief, and therefore requires strict proof thereof as to the allegations contained in paragraph first of said complainant's bill.

Defendant, further answering, says that the capital stock of the E. T., V. & G. R'y Co. is divided into five hundred and seventy thousand shares of the par value of one hundred dollars each, of which one hundred and ten thousand shares is first preferred stock, one hundred and eighty-five thousand is second preferred stock, and two hundred and seventy thousand shares is common stock.

That the market value of said first preferred stock is sixty-eight dollars per share; of second preferred stock, twenty-four dollars per share, and of common stock, nine dollars per share, and that if said compl'ts are the owners of the shares of stock, so as aforesaid alleged in said paragraph first, that the market value of
2 the stock owned by Nicholas Thouron is six thousand three hundred dollars; the market value of the shares owned by C. Sligo de Pothonier is forty-eight thousand dollars; the market value of the shares owned by Frederick J. Burt is five thousand seven hundred dollars; the market value of the stock owned by William J. Barr is one thousand eight hundred dollars; the market value of the stock owned by Edmund Allen is seventeen thousand one hundred dollars, in all seventy-eight thousand and two hundred dollars; that the market value of the entire stock of the def't is now the sum of fourteen million three hundred and ninety-five thousand dollars.

Second. Deft, further answering, says that it admits that the allegations contained in paragraph second of complainant's bill are true.

Third. Def't, further answering, says that it admits that the allegations contained in paragraph third of complainant's bill are true.

Fourth. Def't, further answering, says that it denies each and

every allegation contained in paragraph fourth of complainant's bill.

Fifth. Def't, further answering, says it denies each and every allegation contained in paragraph fifth of complainant's bill.

Sixth. Def't, further answering, says it denies each and every allegation contained in paragraph sixth of complainant's bill.

Seventh. Def't, further answering, says it denies that the control of the def't company has been actually used by its directors for their own private and individual interest or to promote the interest of other properties owned or controlled by them or either of them. On the contrary def't avers that its board of directors has at all times been faithful to the trusts reposed in said directors and each of them and have managed the property of this def't for the best interest of its stockholders.

Def't denies that the proposed lease to the Richmond &
3 Danville R. R. Co. of the defendant's property was made to a rival company or one whose interest it would be to keep down the gross earnings of the def't to the lowest point sufficient to yield the minimum rental guaranteed, or to divert all trade below Chattanooga and below Morristown to its own line without adequate provisions having been inserted in said lease to prevent such diversion or to secure far rates or an equitable division of revenue as in complainant's bill alleged.

Deft., further answering, says it is wickedly false and untrue, as alleged in complainant's bill, that the so-called minority directors of defendant assented and approved of the provisions of said lease without informing themselves as to the facts, was to the provisions which ought to have been inserted in said lease in order to protect the line of the defendant from the diversion of its business, or that the said so-called minority directors acted without caution and vigilance in the making of said lease, or that after the attention of the so-called minority directors had been called to the facts that they showed themselves indifferent to the interest of the company or so incompetent to understand the character and effect of the instrument that they approved and issued to the stockholders a circular, a copy of which is annexed to and marked Exhibit "B" of complainant's bill.

It admits that it is true that said circular, marked Exhibit "B," was issued and circulated among the stockholders of the def't company by the persons whose names are thereto attached; but, on the contrary, this def't avers that the so-called minority directors are men of the highest character and intelligence in the conmunity in which they live—John Greenough being a member of the firm of Poor & Greenough, large bankers and brokers of the city of New York; William L. Bull, being a member of the firm of Edward Sweet & Co., bankers and brokers of the said city of New York, and himself, president of the New York Stock Exchange; Richard Irvin,
Jr., being also a large banker and broker of said city; George
4 Cappell, being a member of the banking firm of Maitland, Phelps & Co., and chairman of the board of directors of the Denver & Rio Grande Railroad Co., and one of the largest and best

known houses of that line of business in the city; Thomas P. Fowler, an attorney-at-law of New York city, having had a large railroad experience and is president of the New York, Ontario & Western Railroad Company; Charles M. McGhee, formerly a resident of Knoxville and now of New York city, president of the Memphis & Charleston railroad, and well-known both in Tennessee and in New York as a man of large and varied railroad experience, and James E. Granniss, president of the Georgia Midland Railroad Company, a man of large railroad experience.

The said directors, together with their codirectors of this def't company, gave careful and patient study to the terms and stipulations of said proposed lease and concurred therein, because they thought and deemed it for the best interest of this def't company, and approved the same because, in their opinion, they ought so to do. Def't denies that the credit of this def't has in any way been impaired by any action of its directors, and denies each and every other allegation in the first subdivision of paragraph seventh of complainant's bill not hereinbefore admitted.

And in answer to subdivision second, def't says that it is false and untrue that Samuel Thomas at the time of the purchase of six million five hundred thousand dollars of the preferred stock of the E. T., V. & G. R'y Co., as set forth in the second subdivision of paragraph seventh of complainant's bill, was the owner of or claimed to be the owner of the Southern Trust Company, but that he had no interest whatsoever therein, save the apparent ownership of sufficient stock to qualify him to serve as a director of said company; that although legal title of enough of said stock to qualify him as a director of said Southern Trust Company stood in his name, yet in truth and in fact he did not own the same nor did he own any stock in the said Southern Trust Company or have any interest whatsoever therein.

5 And def't, further answering, denies each and every allegation in subdivision second of paragraph seventh of complainant's bill, except that the allegation that a majority of the members of the board of this def't in Feb'y, 1887, were substantially the same as at present.

And in answer to subdivision third of paragraph seventh of complainant's bill def't says the Mobile & Birmingham Railway Company in the spring of 1887 was a projected line from Mobile to the line of the E. T., V. & G. R'y Co. to a point near Selma, Alabama, and from a point near Brierfield, Alabama, north to Birmingham, in said State, so as to form a line for the E. T., V. & G. R'y Co. to reach the Alabama coal fields and the manufacturing interests in and about Birmingham and Bessimer in said States.

At the date mentioned sixty miles of rail had been laid and a costly bridge over the Tombigbee river was in course of construction and the work of grading and preparing the road-bed from Tombigbee river was in progress, about thirty-five miles thereof having been already graded; and def't avers that there has been expended on that property up to the date aforesaid more than one and a quarter million of dollars. The Mobile & Birmingham Railway Co. de-

sired to procure the means necessary to build its line to a junction with the E. T., V. & G. R'y Co. by an issue of its bonds secured by a mortgage upon the property, and in order to negotiate the bonds desired the endorsement and guarantee of the E. T., V. & G. R'y Co., which said guarantee this def't agreed to give provided the Mobile & Birmingham Railway Company would issue to it a majority of its capital stock, the authorized issue whereof was three million of dollars. The Legislature of the State of Alabama enacted a law authorizing such guarantee, and in accordance with its provisions a board of directors of the E. T., V. & G. R'y Co., after carefully considering the question, agreed to and did endorse the bonds of the Mobile & Birmingham Railway Company to the amount of $2,500,000.00, and afterwards in the additional sum of $500,000.00, causing, however,

6 before endorsing said additional sum of $500,000.00, to be executed by the said Mobile & Birmingham Railway Company a waiver of its right to build north of the E. T., V. & G. R'y Co.'s main line so that the last-named company could build branches, which were then contemplated under the provisions of its extensive mortgage which, at the time of the original contract with said M. & B. R. R., but which had been before the guarantee of said $500,000.00, had not been authorized, and receiving from the Mobile and Birmingham Railway Company, in consideration of such guarantee, a majority of the capital stock of said Mobile & Birmingham Railway Company. All the agreements and instruments in the transaction provided for the transfer to the E. T., V. & G. R'y Co. of one % of the capital stock of said Mobile and Birmingham Railway Company; but, as a matter of fact, this def't avers that the amount of capital stock received by it was about 90% of the entire issue, the remaining 10% being mostly held by various local subscribers in Alabama, and no part of the stock being held by or for either Samuel Thomas or Calvin S. Brice.

And def't further says that the Mobile & Birmingham Railway Company has only recently been operated from Mobile to a connection with the E. T., V. & G. R'y Co., and it is only within the last two months in a condition to be operated as a trunk-line road. When so operated the def't believes and charges the fact to be that said Mobile & Birmingham Railway Company will begin to make reasonable earnings, and when the extension to the coal fields northwest of Brierfield is made sufficient, offers and propositions of business having already been submitted to this def't by coal and iron companies along the line of said railroad, to insure to the line to Mobile a net profit of much more than sufficient to pay the interest on its final mortgage bonds.

Def't believes that the stock received for such endorsement and guarantee will become a source of profit to it, increasing as the business along such line is developed.

Def't, further answering, says that the allegation charging

7 a conspiracy on the part of George Scott or any other person with Samuel Thomas and Calvin S. Brice or either of them in relation to the matter of the Mobile & Birmingham Railway

Company or in connection with any other matter concerning this defendant or its business is maliciously false and untrue.

And def't further avers that the entire transaction of the M. & B. R'y Co. was carefully examined before it was entered into by the board of directors of the E. T., V. & G. R'y Co. other than said Thomas and Brice, and approved and endorsed by the individual members of the board owning a controlling interest in the E. T., V. & G. R'y Co. and having no interest whatever otherwise in the M. & B. R'y Co., and all expenditures from the proceeds of the sale of the bonds were made upon the supervision of the regular officers of the E. T., V. & G. R'y Co. without profit or diversion to any person or persons or corporation whatever; and def't further avers that Calvin S. Brice has not and never has had any ownership in any bonds of the M. & B. R'y Co.

Def't, further answering, says that at a meeting of the stockholders of the E. T., V. & G. R'y Co. held at Knoxville, Tennessee, on the 16th day of November, 1887, the printed report of the president of this def't was submitted to said stockholders in which was set forth the fact connected with the M. & B. R'y Co. and the action of the E. T., V. & G. R'y Co. connected therewith.

The said report was adopted by said stockholders and the action of the executive officers of the company therein was approved, ratified, and confirmed.

That at said meeting four hundred and sixty-eight thousand and five hundred and sixteen shares of the stock of the def't company was present either in person or by proxy.

And def't, further answering, says that all the money derived from the sale of the first-mortgage bonds of the M. & B. R'y Co. and all sums raised in connection with the said railroad have
8 been used for no other purposes than in — connection.

And def't, further answering, says that it admits that the five hundred thousand dollars in extension bonds of the def't were paid for for the acquirement of the capital stock of the Walden Ridge railroad, and it admits that Mr. E. R. Chapman, the president of the said railroad company, was a member of the firm of Moore & Schley, and that John G. Moore, a director in the def't corporation, was also a member of the said firm.

Defendant denies that said property was worthless or that it was purchased from the firm of Moore & Schley, and announces as wickedly false and untrue the assertion that the same was made in order to secure the approval of the said John G. Moore, as a director of this def't, to the policy of the said board of directors.

Def't denies specifically that the property of the Walden Ridge railroad is or was worthless; but, on the contrary, avers that it was and is worth more than the amount paid for it, and that this def't can now sell and dispose of it in the market—the Walden Ridge railroad—for all that it cost this defendant; but that it would be greatly detrimental to the interests of the E. T., V. & G. R'y Co. to part with the same. The Walden Ridge railroad has been built from the line of the Cincinnati Southern railroad into the coal fields of Tennessee, which constituted a great source of the business of the

Knoxville & Ohio railroad, seven-elevenths of the capital stock of which said railroad belongs to this defendant.

Def't avers that the Walden Ridge railroad remained outside of the E. T., V. & G. r'y system, and an enormous amount of coal would have been diverted from that system to the line of the Cincinnati Southern, to the great loss and damage of the E. T., V. & G. R'y Co.

As a matter of fact, def't avers that the development of the iron and coal regions lying in this territory is one of the most important features in the policy of its board of directors and is extremely advantageous to the corporation defendant.

And in answer to the allegations of subdivision fifth of paragraph seventh of complainant's bill def't denies that either
9 Samuel Thomas or Calvin S. Brise or E. J. Sanford or any other director of the E. T., V. & G. R'y Co. have or had any interests in the stock of the Knoxville & Ohio Railroad Company, except to qualify them to act as directors thereof.

Def't admits that it, The E. T., V. & G. R'y Co., owns about two-thirds of the stock of the Knoxville & Ohio R. R., but they deny that said Brise, Thomas, or Sanford or either of them procured the purchase thereof by the def't, but, on the contrary, aver that the E. T., V. & G. R'y Co., predecessor of this company, owned precisely the same amount of stock the def't now owns in said Knoxville & Ohio Railroad Co. for more than seven years last past and for a time antedating any connection of any of the present directors with the E. T., V. & G. R'y Co.

Def't avers that it acquired its ownership in said stock under the terms of its purchase from the parties who purchased the line of the E. T., V. & G. R'y Co. at master's sale in foreclosure proceedings.

Def't admits that the lease of the Knoxville & Ohio R. R. Co. has been authorized to be made by the board of directors of both companies, but denies that by the terms of said lease there is any discrimination or advantage to either of the parties thereto or of the stock or bond holders thereof, but avers that said lease was so authorized simply for the purpose of reducing the general expenses in the management of the property.

Respondent, further answering, says that said lease has not been authorized by the stockholders of def't company, as is required by the statutes of the State of Tennessee before such a lease can take effect, and that concerning the execution of said lease compl'ts can have full and adequate relief, if they are entitled to any, at the meeting of the stockholders, which under the laws of the State of Tennessee must be called for the purpose of considering the propriety of authorizing the execution of said lease, without any interference whatsoever in that behalf by a court of equity.

And in answer to the allegations of subdivision sixth of
10 paragraph — of said complainants' bill def't says that it denies that either Samuel Thomas, Calvin S. Brice, E. J. Sanford, or any other director of the E. T., V. & G. R'y Co. owns mineral lands in the State of Tennessee, as in said subdivision of said paragraph alleged.

Def't admits that said Thomas, Brice, and Sanford are the owners

of stock in companies owning mineral lands in said State. Def't denies that said last-named persons or either of them caused to be constructed a short line of road called the New River railroad, but def't avers that said short line of road had been built and constructed long before the connection of any of said last-named persons with the said E. T., V. & G. R'y Co.

Def't admits that differences arose between Heck and Petree and others as to the furnishing of cars and shipment of coal which were in nowise induced the — ownership of any of the directors of this def't in either the New River railroad or any lands in the State of Tennessee.

Def't says that the Knoxville & Ohio Railroad Company owned at the time of said differences nearly a majority of the stock of the New River Railroad Company; that one Heck, of the firm of Heck & Petree, has for a long time been president of said New River Railroad Co. and a large owner of coal lands on the line of the railroad. He had shipped large quantities of freight over said line, was largely indebted to the said R. R. Co., and refused to account therefor, which gave rise to the difference between the E. T., V. & G. R'y Co. and the said Heck; that in order to induce the said Heck to make an accounting to said New River railroad, which stock as aforesaid was largely owned by the Knoxville & Ohio Railroad Company, the stock of the latter railroad being owned by the E. T., V. & G. R'y Co., the def't adopted measures or attempted to do so to force said Heck to said accounting.

Def't admits that said differences, so far as the same relate
11 to the furnishing of cars and shipment of coal, became the subject of legal proceedings before the Interstate Commerce Commission. The Interstate Commerce Commissioners, having considered the same, gave an opinion, and although this defendant has been advised that said decision is not legally binding upon it, still it has carefully followed the same from the date of its rendition, and nothing contrary thereto since the decision aforesaid has at any time been done by this defendant or its officers, agents, or servants.

Eighth. And the def't, further answering, says, in answer to the allegations of paragraph — of complainants' bill, that it is false and untrue that a majority of the directors of this defendant have an interest by reason of their ownership of the stock of the Terminal Railway and Warehouse Company and the Richmond & Danville R. R. Co. directly adverse to the interests of the E. T., V. & G. R'y Co., or that the minority directors have shown their inability to protect the interests of the stockholders of the defendant company, and that there have been any fraudulent dealings by any of the directors of this def't with it, or that any of the directors have taken advantage of their position as officers and directors in any way, manner, or form, or that a majority of the present board of the def't is unscrupulous and cannot safely be entrusted with the management and control of its property.

Def't denies each and every allegation contained in said paragraph.

Ninth. And, further answering, this def't avers that the present

board of directors of this def't did not constitute its board of directors at the time of either its acquirement of the Walden Ridge Railroad Company or its endorsement of the Mobile & Birmingham Railway Company's bonds or of the suit instituted against it before the Interstate Commerce Commissioners by Heck & Petree. Upon the contrary, it avers that its present board of directors was elected upon the 21st of November, 1888, by a vote of 287,630 votes of its stock, at a meeting held in the city of Knoxville, in the State of Tennessee, at which said meeting said complainant, C. Sligo
12 de Pothonier, was represented by proxy.

That long prior to the holding of said meeting all of the charges asserted in the complainants' bill had been made public by publication in the daily newspapers in Knoxville, Tennessee, by similar publications *of* the city of New York and in the city of Richmond, Virginia, and by printed circulars, and were well known, as this def't is informed and believes and so charges the fact to be, by the complainants herein.

And def't avers that all of said charges save those relating to the lease of the Richmond & Danville R. R. Co. were so circulated and put in print by a minority of the stockholders of the Richmond & West Point Terminal Railway and Warehouse Company in a controversy concerning the election of directors for said company held on the twenty-first day of November, 1888; that said charges, when so made, were refuted and in such manner to satisfy and convince those who made the same that they were unjust, unfounded, and untrue.

And def't avers that the said charges are now repeated by compl'ts herein with full knowledge of said facts and with full knowledge that the same were thus openly made and refuted long prior to the election of the present board of directors of the E. T., V. & G. R'y Co.

Tenth. And, further answering, this def't avers that these complainants are not maintaining this suit nor have they brought the same for the purpose of redressing any wrong or injury that they or either of them have sustained; that, on the contrary, this def't avers that the same has been instituted, prosecuted, and instigated nominally in the name of complainants, but really for the benefit of the Norfolk & Western Railroad Company, a corporation of the State of Virginia; that the said Norfolk & Western R. R. Co. is a competitor for business in the State of Tennessee and elsewhere with the Richmond & Danville Railroad Company, the lessee in the lease referred to in complainants' bill; that for a long time it has been enjoying extensive privileges afforded to it by the E. T., V. & G. R'y Co.; that ever since the completion of the E. T., V. &
13 G. railroad, in 1881, until recently the Norfolk & Western Railroad Co. was its only eastern outlet, and the territory served by *its* defendant and its patrons obliged to submit to such extortions in rates as said Norfolk & Western R. R. Co. might inflict.

That recently the Richmond & Danville R. R. Co. has opened another line to Paint Rock from the eastern seaboard, giving another

eastern outlet to this def't and its patrons, and has put that line in condition for through business.

That the Norfolk & Western Railroad Company has, as this def't is informed and believes, caused this litigation to be begun and carried on and has done various other things for the purpose of annoying and harassing the E. T., V. & G. management and forcing it to give to said N. & W. R. R. exclusive rights in East Tennessee as well as that of the Richmond & Danville and Richmond & West Point Terminal Railway and Warehouse Companies, to the detriment of the E. T., V. & G. R'y Co. and to the detriment of the citizens along its line, depriving them of facilities for the lawful interchange of business; that this bill has been filed simply as a retaliatory measure as against this def't and its individual directors because the def't has executed and its board of directors have authorized the execution of said lease.

This def't further avers that this suit has neither been instituted nor is being prosecuted in the interest of complainants, but that the same is being carried on nominally in their names for the benefit of the Norfolk & Western R. R. Co.; that the chief solicitors in this suit are the solicitors in New York and Philadelphia of the N. & W. R. R. Co. Def't avers and charges, therefore, that this suit is not being prosecuted and maintained in good faith by compl'ts for their own benefit, but that they are lending themselves to the N. & W. R. R. Co. in its prosecution, in which latter-named company compl'ts and each of them are large stockholders and have large interests.

14 That if any of the grievances exist as set forth in said bill the same can be remedied by application of the compl'ts to the def't or its board of directors, but that no such application has ever been made, and that this def't corporation avers that it is well able by its board of directors and its corporate organization to regulate its internal affairs, and that no just complaint by any of its stockholders has ever been made which has not received immediate attention, and whenever a just cause for complaint existed the wrong, whatever the same has been, has been righted. Wherefore, upon final hearing hereof, def't prays that the injunction heretofore allowed herein *pendente lite* may be dissolved; that the complainants' bill herein may be dismissed, and that it may go hence without day and recover its costs herein expended.

EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY,
By SAMUEL THOMAS, *President.*

HOADLEY, LAUTERBACH & JOHNSON,
W. M. BAXTER,
ANDREWS & THORNBURGH,
HENDERSON & JOHRLIUON,
Solicitors for Complainants.

EDGAR W. JOHNSON,
W. M. BAXTER,
GEORGE ANDREWS,
Of Counsel.

STATE OF TENNESSEE, *City and County of New York:*

Samuel Thomas, being sworn, makes oath and says that he is president of the E. T., V. & G. R'y Co., a corporation duly incorporated under the laws of the State of Tennessee; that the allegations contained in the foregoing answer so far as the same are stated as of his own knowledge are true, and those which are stated upon information and belief he believes to be true.

SAMUEL THOMAS.

Sworn to before me this 21st day of January, 1889.

S. F. SULLIVAN,
Notary Public.

15 *Answer of Richmond & West Point Terminal Railway & Warehouse Co. Filed Jan'y 23rd, 1889. W. L. Trent, C. & M., by W. A. Galbraith, D. C. & M.*

In the Chancery Court, Knoxville, Tennessee.

NICHOLAS THOURON, C. SLIGO DE POTHONIER, Trading as C. Sligo de Pothonier & Co.; Frederick J. Burt, Trading as Frederick Burt & Co.; William J. Barr, and Edmund Allen and A. G. Sharp, Plaintiffs,

against

E. T., V. & G. R'Y Co., a Corporation Existing under the Laws of Tennessee and Georgia, and Richmond & West Point Terminal Railway and Warehouse Company, a Corporation Existing under the Laws of Virginia; John H. Inman, Samuel Thomas, John G. Moore, Calvin S. Brice, C. M. McGhee, T. M. Logan, George S. Scott, Alfred Sully, John Greenough, William L. Bull, Richard Irvin, Jr., George Cappell, Thomas P. Fowler, James E. Granniss, E. J. Sanford, and W. J. Chisholm, Defendants.

Answer of The Richmond & West Point Terminal Railway and Warehouse Company.

To the Hon. Henry R. Gibson, chancellor:

Now comes The Richmond & West Point Terminal Railway and Warehouse Company, one of the def'ts herein, and, without waiving all or any of the exceptions it might have to the many and manifest errors in complainants' bill contained, for answer to so much thereof as it is advised it is necessary to make answer thereto, says—

First. That so far as the allegations contained in the first paragraph of complainants' bill filed herein *is* concerned this def't says it has no knowledge of the truth of said allegations nor information enough to form any judgment as to whether the same are true or otherwise, and therefore denies the same and requires strict proof thereof.

16 Second. In answer to the allegations of paragraph second of said bill this def't admits the truth of the same.

Third. In answer to the allegations of paragraph third this def't admits the truth of the same.

Fourth. In answer to the allegations contained in the fourth paragraph of complainants' bill this def't says that it is a corporation organized under and by virtue of the laws of the State of Virginia and is a resident and citizen thereof, and denies each and every other allegation in said paragraph contained, but avers it had full power to purchase and has now lawful authority to hold and own shares of the capital stock of the E. T., V. & G. R'y Co., to vote thereon, and to exercise each and all the rights of a stockholder in said corporation.

Fifth. And, in answer to the allegations contained in the fifth paragraph of complainants' bill, def't denies each and every of the same.

Sixth. Def't, further answering, deny each and every allegation contained in the sixth paragraph of complainants' bill.

Seventh. Further answering, def't denies each and every allegation contained in the seventh paragraph and of each of the subdivisions of the seventh paragraph in the complainants' bill contained.

Eighth. And, further answering, this def't says that it adopts and reasserts all the allegations contained in paragraph tenth of the answer of the E. T., V. & G. R'y Co., filed herein, as completely and particularly as if the same were set forth herein, and prays that the same may be taken as part hereof, reference being made to said paragraph tenth of said answer for more particularity.

Wherefore, upon final hearing hereof, def't prays that the injunction heretofore allowed herein *pendente lite* may be dissolved; that complainants' bill herein be dismissed, and that it may go hence without day and recover its costs herein expended.

17 THE RICHMOND & WEST POINT TERMINAL RAILWAY & WAREHOUSE CO.,
By JOHN H. INMAN, *President.*

BARROW & THOMAS,
HOADLEY, LAUTERBACH & JOHNSON,
Sol's for Respondents.

POPE BARROW,
EDGAR M. JOHNSON,
Of Counsel.

STATE OF NEW YORK, }
City and County of New York, } ss:

John H. Inman, being duly sworn, makes oath and says that he is president of the Richmond & West Point Terminal Railway and Warehouse Company, a corporation duly incorporated under the laws of the State of Virginia; that the allegations contained in the foregoing answer, so far as the same are stated as of his own knowledge, are true, and those which are stated upon information and belief he believes to be true.

JOHN H. INMAN.

Sworn to before me this 21st day of January, 1889.

GEORGE W. VULTEE,
Notary Public (49), *C. & C. of N. Y.*

Petition of A. G. Sharp. Filed Dec. 29th, 1888. *W. L. Trent, C. & M.*

In the Chancery Court of Knox County.

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y CO. *et al.* } # 4417.

To the Hon. Henry R. Gibson, chancellor, &c.:

Your petitioner respectfully shows unto your honor that he is a resident of Hamilton county, Tenn.; that he is the owner in his own right of fifty shares of the common stock of the E. T., 18 V. & G. R'y Company, and as such he desires to become a party co-complainant in the above-entitled suit, and bear his proportion of the expenses thereof, and share the benefits sought thereby.

To that end petitioner prays to be allowed to become a co-compl't in said suit and join in the prayer for relief therein prayed, and in duty bound he will ever, &c.

A. G. SHARP.

Sworn to and subscribed before me this 29th day of December, 1888.

W. L. TRENT, *C. & M.*

I hereby acknowledge myself security for the costs incident to this petition.

WILLIAM RULE.

SATURDAY, *December 29th*, 1888.

Court met pursuant to adjournment.

Present and presiding: The Hon. Henry R. Gibson, chancellor.

The record of Saturday, Dec. 22nd, read, approved, and signed, and the following additional proceedings were had, to wit:

Order.

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y CO. *et al.* } # 4417.

A. G. Sharp, having filed a petition in this cause to be made a party co-complainant in this cause, it is ordered that the prayer of said petitioner be granted upon petitioner joining in the bond for costs heretofore given in this cause; and, petitioner having complied with said condition, he is hereby made a party co-complainant.

19 SATURDAY, *February 2nd*, 1889.

Court met pursuant to adjournment.

Present and presiding: The Hon. Henry R. Gibson, chancellor.

The record of Saturday last was read, approved, and signed, and the following additional proceedings were had, to wit:

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y CO. *et al.* } #4417.

Be it remembered that this cause came on to be heard before the Hon. Henry R. Gibson, chancellor, upon all the proceedings hereinbefore had in this cause, but now especially upon a transcript of an order made by the United States circuit court for the northern division of the eastern district of Tennessee removing this cause from this court to the said United States circuit court, which transcript is in the words and figures following:

Be it remembered that at a circuit court of the United States begun and held for the northern division of the eastern district of Tennessee, at the Federal court-room, in the city of Knoxville, within said district and the sixth circuit, on the second Monday, it being the 14th day of January, A. D. 1889—present and presiding, the Hon. D. M. Key, judge of the United States district court for the eastern and middle district of Tennessee—the following proceedings were had, to wit:

MONDAY MORNING, *January 28th*, 1889.

Court met pursuant to adjournment.

Present and presiding: The Hon. D. M. Key, judge, &c.

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y CO. *et al.*

Order upon Petition for Removal.

It appearing to the court from the petition filed in this cause and the affidavits thereto attached that from prejudice or
20 local influence petitioner, the Richmond & West Point Terminal Railway and Warehouse Company, will not be able to obtain justice in the chancery court of Knox county, Tennessee, or in any other State court to which said petitioner as def't may or could, under the laws of the State of Tennessee, have the right on account of such prejudice or local influence to remove this cause, and that it is therefore entitled to have the removal which it seeks. It is accordingly ordered that this cause be and the same is hereby removed from said chancery court of Knox county to this court upon the petitioner giving bond with security for costs in the sum of one thousand dollars, which is accordingly done, and that notice of this order be served upon said chancery court of Knox county, Tennessee, and that said court and the clerk thereof be, and is hereby, requested to furnish, upon application of petitioner and the payment

of the lawful fees therefor, a copy of the record on file in said court in this cause to be filed in this court.

EASTERN DISTRICT OF TENNESSEE, *ss:*

I, H. H. Taylor, clerk of the United States circuit court for said district, do hereby certify that the foregoing is a full, true, and perfect copy of an order made in the cause mentioned in the caption as the same appears of record in my office.

Witness my hand and official seal this 30th day of January, 1889.

H. H. TAYLOR, *Clerk,*
By J. T. CARTER, *Deputy Clerk.*

The court is therefore pleased to decree that the clerk & master of this court at once proceed to make a full, true, and perfect transcript of the record in this cause to be filed in said United States circuit court, and that all further proceedings in this cause in this court be suspended so long as this cause may remain in said United States circuit court or until it shall be remanded to this court.

21 *Rule Docket Entries.*

1888, Dec. 20.—Bill filed. Pros. bond, $2.50. Ingersoll & Peyton, sec't'ys.
" " Sub. to ans. and 2 copies issued to Knox Co.
" 26.—Copy of bill, 9,500 w. to Andrews & Thornburg.
" 29.—Petition of A. G. Sharp filed. Wm. Rule, sec't'y. Notice given to George Andrews.
" " A. G. Sharp allowed to become party, T. 1.
" " Copy of bill (9,500 w.) to Wm. M. Baxter.
1889, Jan'y 23.—Answer of E. T., V. & G. R'y Co. filed. Notice given.
" " " R. & W. P't T. Co. " " "
" 31.—Transcript from Federal court filed.
Feb'y 2.—Transcript forwarded to Federal court, T. 110.

Bill of Cost.

State tax	$2 50
County "	$2 00
C. & N., W. L. Trent, filing bill, 25; pros. bond, 75; sub. to ans., 75; 2 copies bill 1900, sub. to ans., 75; 2 copies, 50; filing 2 ans., 50; 3 notices, 75; 2 orders, 50; filing petition, 25; aff't, 25; sect'y, 25; 2 rules, 20; 3 dockets, 30; entering decree, 50; tax cost, 50	$25 50
Sh'ff J. K. Lones, sum. 2 def'ts	$2 00
	$32 00

1889, Feb. 2, transferred to Federal court.

STATE OF TENNESSEE, *Knox County,* } *ss.*

I, W. L. Trent, clerk & master of the chancery court at Knoxville,

Tennessee, do hereby certify that the foregoing transcript of 45 pages and the papers sent herewith marked "# 1 to 4" (inclusive), "W. A. Galbraith, D. C. & M.," contain all the record and proceedings had in said court in the case of Nicholas Thouron *et al. vs.* E. T., V. & G. R'y Co. *et al.*, # 4417.

22 Given under my hand and seal of said court, at office in Knoxville, Tennessee, this March 16th, 1889.

W. L. TRENT, *C. & M.*

[SEAL.] By W. A. GALBRAITH, *D. C. & M.*

C. &. M., W. L. Trent, transcript, 32,500 w., $32.50; seal, 50-- $33 00

(Endorsed:) Filed April 1, 1889. H. H. Taylor, clerk. By J. T. Carter, D. C.

23 *Prosecution Bond.*

In the Circuit Court of the United States for the Northern Division of the Eastern Dist. of Tennessee.

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y CO. *et al.*

Know all men by these presents that we, The Richmond & West Point Terminal Railway and Warehouse Company and R. N. Hood are held and firmly bound unto Nicholas Thouron, C. Sligo de Pothonier & Co., Fred. J. Burt & Co., W. J. Barr, Edmund Allen, and A. G. Sharp in the penal sum of one thousand dollars; to the payment whereof we bind ourselves and each of us and each and every of our several heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands on this the 28th day of January, 1889.

The condition of this bond is such that the said Richmond & West Point Terminal Railway and Warehouse Company has this day filed a petition in the circuit court of the United States as stated in the caption of this bond to remove the cause above stated to said circuit court of the United States from the chancery court of Knox county Tennessee.

Now, if the said Richmond & West Point Terminal Railway and Warehouse Company shall prosecute said petition with effect, or in failure thereof pay and satisfy all costs that may be adjudged against it in said cause, or on failure of said def't, if convicted, to pay and satisfy said costs, if the said plaintiff shall pay the same, then this bond to be void; otherwise to remain in full force and virtue.

RICHMOND & WEST POINT TERMINAL RAILWAY & WAREHOUSE COMPANY,

By R. N. HOOD, *Sol.* [SEAL.]
R. N. HOOD, *Security.*

Attest: J. T. CARTER, *Dep. Clerk.*

(Endorsed:) Filed 28 day Jan'y, 1889. H. H. Taylor, cl'k, by J. T. Carter, D. C.

24 *Replication & Demurrer.*

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

NICHOLAS THOURON *et al.*
vs.
THE E. T., V. & G. R'Y Co. *et al.* } No. —.

And now comes the defendant, The Richmond & West Point Terminal Railway and Warehouse Company, by Pope Barrow and R. N. Hood, its solicitors, and not waiving its right to insist that the pleas of complainants are insufficient in law files this its replication to the several pleas of the compl'ts, Nicholas Thouron, Frederick J. Burt, Wm. J. Barr, Edmund Allen, filed by them to the jurisdiction of this court:

I.

And for replication to the first plea of said compl'ts this def't says that it is not true that this suit does not involve a dispute or controversy between plaintiff, a citizen of Tennessee, to wit, A. J. Sharp, and this defendant or the Richmond & Danville R. R. Co.; and this def't avers that this suit does not in fact involve a dispute and controversy between the said A. G. Sharp, who is a citizen of the State of Tennessee, and this defendant, which is a citizen of the State of Virginia.

II.

And for replication to the second plea of said compl'ts filed as aforesaid this def't, reserving its right to insist that said plea is insufficient in law, says that it is not true that there is no matter in dispute between said A. G. Sharp and this defendant or the Richmond & Danville R. R. Co., which exceeds, exclusive of interest and costs, the value of $2,000.00; and def't avers that the matter in dispute in this cause between the said A. G. Sharp, compl't,
25 on the one side and this def't on the other side, to wit, the right of compl't in this cause to the relief prayed by the bill therein against this defendant, exceeds the sum or value of $2,000.00.

III.

And for replication to the third plea of complainants' bill, filed as aforesaid, this def't, reserving its right to insist that said plea is insufficient in law, says that said A. G. Sharp was not properly or collusively joined as a party complainant to this suit and was not joined as such compl't for the purpose of creating a case removable to this court from said State court, and it is not true that said A. G. Sharp was joined as a party complainant to said suit nor for the *bona fide* purpose of prosecuting said suit, but merely in form and at the request of this defendant to oust said State court of its jurisdiction and to remove said suit to this court.

IV.

And this defendant, as to the fourth plea, says that the same is not sufficient in law, and that it is not bound to answer the same.

V.

This defendant demurs to said fifth plea, and says that it appears by the record of said suit that the order for the removal of said suit heretofore made is conclusive of the facts on which it is based, and that said compl'ts are estopped by the said order of removal from now alleging that it is not true that from local influence or prejudice this def't will not be able to obtain justice in said State court.

Wherefore this defendant prays that said several pleas may be dismissed.

POPE BARROW,
R. N. HOOD, *Solicitors.*

(Endorsed:) Filed April 9th, 1889. H. H. Taylor, clerk, by J. T. Carter, D. C.

26 Circuit Court of the United States for the Eastern District of Tennessee.

NICHOLAS THOURON, C. SLIGO DE POTHONIER, Trading as C. de Pothonier & Co.; Frederick J. Burt, Trading as Frederick Burt & Co.; William J. Barr, Edmund Allen, and A. G. Sharp, Plaintiffs,

against

EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY, a Corporation Existing under the Laws of the States of Tennessee and Georgia; Richmond & West Point Terminal Railway & Warehouse Company, a Corporation Existing under the Laws of the State of Virginia; John H. Inman, Samuel Thomas, John G. Moore, Calvin S. Brice, C. H. McGhee, T. M. Logan, George S. Scott, Alfred Sully, John Greenough, William L. Bull, Richard Irvin, Jr., George Coppell, Thomas P. Fowler, James E. Granniss, E. J. Sanford, W. J. Chisholm, Defendants.

Petition to Remove Cause so Entitled from State Court.

To the honorable the judges of the circuit court of the United States for the eastern district of Tennessee:

Your petitioner, The Richmond & West Point Railway & Warehouse R'y, respectfully shows that it is a corporation organized under and by virtue of the laws of the State of Virginia and is a citizen and resident of said State; that it is one of the def'ts in the above-entitled suit, which has not been tried, but is now pending for trial in the chancery court, Knoxville, Tennessee, and that it desires to remove the same into the circuit court of the United States for the eastern district of Tennessee.

Your petitioner further states that in the said above-mentioned suit there is a controversy between a citizen of the State of Tenn., in which said State said suit is brought, and a citizen of another State, to wit, a controversy between your petitioner, who avers that it was at the commencement of said suit and still is a corporation
27 and a citizen of the State of Virginia, and A. G. Sharp, who was at the commencement of said suit and still is a citizen of the State of Tennessee, in which State said suit was brought.

And that both the said A. G. Sharp and your petitioner are actually interested in said controversy.

Your petitioner further states that it has filed herewith an affidavit that it may be made to appear to the said circuit court that from prejudice and local influence your petitioner will not be able to obtain justice in said State court or in any other State court of said State to which your petitioner may, under the laws of the State of Tennessee, have the right on account of such prejudice or local influence to remove said cause.

That said suit was brought for the purpose, among others, of having certain preferred stock of the E. T., V. & G. R'y Co., a corporation of the State of Tennessee, a large amount of which said stock, to wit, $6,500,000.00, belongs to and is owned by your petitioner, enjoined and restrained from voting at elections for officers of said corporation and at meetings held for the transaction of its business, and also for the purpose of having certain provisions in the certificate of reorganization of the said E. T., V. & G. R'y Co., giving to the holders of first preferred stock the right to elect a majority of its board of directors, declared contrary to public policy and in violation of the laws of the State of Tennessee and null and void; and, further, praying that the holders of all stock in the E. T., V. & G. R'y Co., whether owners of the first or second preferred or common stock of said company, be declared entitled to a vote on each share of stock held by them, irrespective of its character, although by the terms of said certificate of reorganization the holders of second preferred and common stock had not the right so to do; and, further, seeking to obtain an order of the court in which said suit is pending that a stockholders' meeting be held under the direction and supervision of said court for the purpose of electing
28 directors of said E. T., V. & G. R'y Co.; that a receiver might be appointed to take charge, custody, and possession of the railroad property and franchises of the said E. T., V. & G. R'y Co. until, by the lapse of time or otherwise, the holders of second preferred and common stock of said company shall have an equal opportunity in proportion to their several holdings with petitioner and other holders of first preferred stock to elect directors to represent and protect their interests, notwithstanding the terms of said reorganization agreement aforesaid, and for other further and different relief, as will more particular- appear by the prayer attached to the bill filed by plaintiffs in said chancery court, Knoxville, Tennessee.

Your petitioner therefore prays that the said affidavit may be accepted as good and sufficient, and that the said suit may be removed into the said circuit court of the eastern district of Tennessee

aforesaid, and, to the end also that said removal may be perfected, that such order be made in the premises as the nature of the case may require.

RICHMOND & WEST POINT TERMINAL RAILWAY & WAREHOUSE CO.,
[SEAL.] By JOHN H. INMAN, *President.*

HOADLEY, LAUTERBACH & JOHNSON,
BARROW & THOMAS AND R. N. HOOD,
Sol's for Petitioner.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

John H. Inman, being duly sworn, says that he is president of the Richmond and West Point Terminal Railway & Warehouse Company, a corporation; that he has read the foregoing petition and knows the contents thereof, and that the allegations and statements therein contained are true.

JOHN H. INMAN.

Sworn to and subscribed before me this 17th day of January, 1889.

29
[SEAL.] MARK J. KATZ,
Notary Public (73), *of N. Y. Co.*

Circuit Court of the United States for the Eastern District of Tennessee.

NICHOLAS THOURON, C. SLIGO DE POTHONIER, Trading as C. Sligo de Pothonier & Co.; Frederick J. Burt, Trading as Frederick J. Burt & Co.; William J. Barr, Edmund Allen, and A. G. Sharp, Plaintiffs,
against
EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY.

Cause pending in State court.

Affidavit to Remove.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

John H. Inman, being duly sworn, says that he is president of The Richmond & West Point Terminal Railway and Warehouse Company, a corporation duly organized under the laws of the State of Virginia, one of the defendants in the above-entitled cause; that from prejudice and local influence the said Richmond & West Point Terminal Railway & Warehouse Company will not be able to obtain justice in the chancery court, Knoxville, Tennessee, or in any other State court to which the said def't, your petitioner, may, under the laws of said State of Tennessee, have the right to remove the said cause because of such prejudice or local influence.

JOHN H. INMAN.

Sworn to before me this 17th day of January, 1889.

MARK J. KATZ,
[SEAL.] *Notary Public* (73), *of N. Y. Co.*

30 Upon the filing of the foregoing petition and affidavit, and upon petitioner entering into bond for costs as required by law, the clerk of the United States circuit court for the eastern district of Tennessee, at Knoxville, will enter an order of record in said cause to the effect that it appearing to the court from said petition and affidavit thereto attached that from prejudice or local influence petitioner will not be able to obtain justice in the chancery court of Knox county, Tennessee, or in any other State court to which said petitioner as def't may or could under the laws of the State of Tennessee have the right on account of such prejudice or local influence to remove said cause, and that it is therefore entitled to have the removal which it seeks, *and* it is accordingly ordered that said case be, and the same is hereby, ordered to be removed from the said chancery court of Knox county to this court, and that notice of this order be sent to said chancery court of Knox county, and that said court and the clerk thereof be requested to furnish, upon application of petitioner, a copy of the record on file in said cause to be filed in this court.

January 25, 1889.

HOWELL E. JACKSON,
Circuit Judge.

(Endorsed:) Filed January 28, 1889. H. H. Taylor, clerk, by J. T. Carter, D. C.

31 *Bond.*

UNITED STATES OF AMERICA,
Northern Division of the Eastern District of Tennessee, Sixth Circuit.

NICHOLAS THOURON *et al.*
vs.
EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY CO. *et al.* } No. —.

Know all men by these presents that we, the West Point Terminal Railway and Warehouse Company and R. N. Hood, are jointly and severally held and firmly bound unto Nicholas Thouron, Frederick J. Burt, trading as Frederick Burt & Co.; William J. Barr, Edmund Allen, and Edmund P. Dwight, complainants in the cause above stated, in the penal sum of five hundred dollars, well and truly to be paid, and for the payment of which we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals this 27th day of April, 1889; but the conditions of this obligation are such that whereas the above-bound The Richmond & West Point Terminal Railway and Warehouse Co. has prayed an appeal from the decree rendered in the cause above stated to the Supreme Court of the United States, at Washington, D. C., which appeal was granted:

Now, if said appellant shall prosecute said appeal with effect and answer all costs if it fail to make said appeal good, then the above obligation shall be void; otherwise to remain in full force and effect.

RICHMOND & WEST POINT TERMINAL RAILWAY & WAREHOUSE COMPANY,
By R. N. HOOD, *Sol.* [SEAL.]
R. N. HOOD, *Security.* [SEAL.]

(Endorsed:) Filed April 27th, 1889. H. H. Taylor, clerk, by J. T. Carter, dep. clerk.

32 Be it remembered that at a circuit court of the United States begun and held for the northern division of the eastern district of Tennessee, at the court-house, in the city of Knoxville, within said district and the sixth circuit, on the second Monday, it being the 14th day, of January, A. D. 1889—present and presiding, the Hon. D. M. Key, judge of the United — district court for the eastern and middle districts of Tennessee—the following proceedings were had, to wit:

MONDAY MORNING, *Jan'y 28th*, 1889.

Court met pursuant to adjournment.

Present and presiding: The Hon. D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

NICHOLAS THOURON *et al.*
vs.
EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY *et al.*
No. —. Order upon Petition for Removal.

It appearing to the court from the petition filed in this cause and the affidavits thereto attached that from prejudice or local influence petitioner, The Richmond & West Point Terminal Railway & Warehouse Company, will not be able to obtain justice in the chancery court of Knox county, Tennessee, or in any other State court to which the petitioner as defendant may or could under the laws of the State of Tennessee have the right on account of such prejudice or local influence to remove this cause, and that it is therefore entitled to have the removal which it seeks—

It is accordingly ordered that this cause be, and the same is hereby, removed from the said chancery court of Knox county to this court, and that notice of this order be served upon said chancery court of Knox county, Tennessee, and that said court and the clerk thereof be and is requested to furnish, upon application of
33 petitioner and the payment of the lawful fees therefor, a copy of the record on file in said court in this cause to be filed in this court.

(Endorsed:) Entered in Record Book "K," page 33, January 28th, 1889.

34 *Motion to Remand to Chancery Court.*

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y Co., RICH. & W. P. T. R'Y & W. Co. *et al.*

This cause having been removed to this court by an order made by Judge Jackson in chambers and entered of record on a former day of this term, the plaintiffs, by their attorneys, in open court, move this court to remand said cause to the chancery court of Knox county, Tennessee, for the following reasons:

1st. Because the allegations of the petition filed and statements in affidavits herein are untrue.

2nd. Because the affiant, John H. Inman, is now a resident and resides and does business in the city of New York, and cannot and does not know of any prejudice and local influence against the def'ts in the State of Tennessee.

3rd. Because the affiant Inman fails to state that he knows the state of feeling among the citizens of Tennessee towards def'ts in this cause.

4th. Because the application for removal to this court is not made in time.

5th. Because there is no prejudice or local influence which will prevent the def'ts in this cause from obtaining justice in the Knox county chancery court or in any of the other State courts of Tennessee.

Plaintiffs are given reasonable time to answer the petition filed herein for removal.

(Endorsed:) Entered in Record Book "K," page 140, Jan'y 30, 1889.

35 *Order.*

SATURDAY MORNING, *April 6th*, 1889.

Court met pursuant to adjournment.

Present and presiding: The Hon. Howell Jackson, judge of the United States circuit court for the sixth judicial circuit.

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y Co. *et al.* } In Equity. # 844.

In this cause it is by consent ordered that the petitioner, The Richmond & West Point Terminal Railway and Warehouse Company, reply forthwith to the complainant's plea in the said defendant's petition for removal, alleging collusion, to wit, the third plea in this cause, and that twenty days be allowed parties in which to take proof on this issue preparatory to a hearing of the case thereon.

36 *Decree.*

MONDAY MORNING, *May 13th*, 1889.

Court met pursuant to adjournment.

Present and presiding: The Hon. Howell E. Jackson, judge of the United States circuit court for the sixth judicial circuit.

NICHOLAS THOURON *et al.*
vs.
THE EAST TENN., VA. & GA. R'Y CO. *et als.* } # 844.

This cause came on to be heard before the Hon. Howell E. Jackson, circuit judge, presiding and sitting in equity, on the 6th day of April, upon the motion and petition of complainants, Nicholas Thouron and others, heretofore filed, to remand the same to the chancery court at Knoxville, and was argued by counsel and taken under advisement by the court.

And on the 27th day of April, 1889, it appearing from the record of this cause and the admissions of counsel at the hearing that while the petitioner and present complainant, A. G. Sharp, is a citizen of Tennessee, and def't, The Richmond & West Point Terminal R'y and Warehouse Company, is a citizen of Virginia, the original compl'ts in this cause were all non-residents of Tennessee, and either citizens of Pennsylvania or aliens, the court is of the opinion that this cause was improperly removed to this court, which cannot take jurisdiction of the same, and that said motion to remand it is well taken and should be sustained.

It is accordingly ordered and adjudged that this suit be, and the same is hereby, remanded to the chancery court of Tennessee for Knox county, at Knoxville, and that all costs of this cause accrued in this court be paid by the petitioner defendant, The Richmond & West Point Terminal Railway and Warehouse Company, and R. N. Hood, surety on its bond for removal; for which execution is awarded.

37 The clerk of this court will forthwith make out and certify a transcript of all records and proceedings made and had in this court in this cause and deliver the same to the clerk & master of said chancery court of Tennessee, at Knoxville, the costs of which shall be taxed as hereinbefore decreed.

On the hearing of this motion the deposition of A. G. Sharp, W. A. Galbraith, H. B. Branner, J. M. Meek, W. M. Hood, J. M. Thornburgh, and E. J. Sanford were not read or considered, and they will not be copied into any transcript the clerk may make.

And the defendant, The Richmond & West Point Terminal Railway and Warehouse Company, prays an appeal from this decree to the next term of the Supreme Court of the United States, at Washington, D. C., which appeal is granted under the provisions of the act of Feb'y 25, 1889, on the ground that the court has no jurisdiction of the cause, said defendant having executed an appeal bond as required by law.

38 *Motion to Vacate Order of Appeal. Entered on Same Day as Decree.*

NICHOLAS THOURON *et al.*
vs.
E. T., V. & G. R'Y Co. *et als.*

In this cause the complainants, Nicholas Thouron and others, by their solicitors, Ingersoll & Peyton, move the court to vacate the order heretofore entered in this cause granted to the def't, The Richmond & West Point Terminal R'y and Warehouse Company, and appeal to the Supreme Court from the decree remanding this cause to the chancery court of Tennessee, at Knoxville, on the grounds—

1. That no appeal lies from such interlocutory order.
2. That appeal in such case is expressly prohibited by the removal acts of March 3, 1887, and August 13, 1888.

Make same entry — the other case, substituting for Richmond & West Point Terminal R'y & Warehouse Co. the "Richmond & Danville R. R. Co."

This order may be entered in both cases.

R. N. HOOD, *Sol.*

(Endorsed:) Entered May 13, 1889, Book "K," page 160.

39 Be it remembered that at a circuit court of the United States begun and held for the northern division of the eastern district of Tennessee, at the Federal court-room, in the city of Knoxville, within said district and the sixth circuit, on the second Monday, it being the 8th day of July, A. D. 1889—present and presiding, the Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee—the following proceedings were had, to wit:

THURSDAY MORNING, *July 18th*, 1889.

Court met pursuant to adjournment.

Present and presiding: The Honorable D. M. Key, judge, &c.

NICHOLAS THOURON *et al.*
vs.
EAST TENN., VA. & GA. R'Y Co. *et al.* } In Equity. No. 844.

The motion of the complainants to vacate the order of the court allowing an appeal from the decree remanding this cause to the State court was considered by the court, and on consideration was overruled and disallowed.

The clerk of the court will therefore proceed forthwith, as required by law, to make up and transmit the proper transcript of record to the Supreme Court.

40 UNITED STATES OF AMERICA,
Eastern District of Tennessee, } *ss:*

I, H. H. Taylor, clerk of the United States circuit court for said district, do hereby certify that the foregoing transcript of 39 pages,

and the papers sent herewith, marked "No. 1 to 4" (inclusive), "W. A. Galbraith, D. C. & M.," and those marked Ex. "A," "B," & "C," contain all the record and proceedings (not including depositions) had in said court in the case of Nicholas Thouron *et al. vs.* E. T., V. & G. R'y Co. *et al.*, No. 844.

Witness my hand and seal of said court, at office, in Knoxville, Tenn., this 9th day of September, 1889.

[The Seal of the Circuit Court, District of East Tenn.]

H. H. TAYLOR, *Clerk*,
By J. T. CARTER, *Deputy Clerk.*

41 STATE OF TENNESSEE:

Chancery Court at Knoxville.

Know all men by these presents that we, Nicholas Thouron & others, and Ingersoll & Peyton are held and firmly bound unto East Tenn., Va. & Ga. R'y Co., Richmond & West Point Terminal Railway & Warehouse Co., *et al.* in the penal sum of two hundred and fifty dollars, to be void on condition that said principal obligors shall prosecute with effect a suit which they are about to commence in said court against said obligees or pay all cost and damages incident on failure thereof or which may be adjudged against us.

Dec. 20, 1888.

NICHOLAS THOURON & OTHERS. [SEAL.]
INGERSOLL & PEYTON. [SEAL.]

A true copy.

[The Seal of the Circuit Court, District of East Tenn.]

Attest: H. H. TAYLOR, *Clerk*,
By J. T. CARTER, *D. C.*

42 [Endorsed:] No. 1. W. A. Galbraith, D. C. & M. No. 4417. Prosecution bond. Nicholas Thouron *et al.* against E. T., V. & G. R'y Co. *et al.* Filed Dec. 20, 1888. W. A. Galbraith, D. C. & M. Filed Apr. 1, 1889. H. H. Taylor, U. S. cir. c't cl'k.

43 *Subpœna to Answer.*

STATE OF TENNESSEE:

Chancery Court at Knoxville.

To the sheriff of Knox county, Greeting:

Summon East Tennessee, Virginia & Georgia Railway Co. and E. J. Sanford to appear before the chancery court, at Knoxville, on or before the 1st Monday of February next, to answer the original bill which Nicholas Thouron *et al.* have filed in said court against them *et al.*, and have you then and there this writ.

Witness W. L. Trent, clerk and master of our said court, at office in Knoxville, this 20 day of December, 1888.

W. L. TRENT,
Clerk and Master,
By W. A. GALBRAITH,
Deputy C. & M.

Notice.

To the above-named defendants:

The next term of the chancery court at Knoxville begins on the 4 Monday of May next, but, by a rule of said court, the first Monday of each month is a return day for original and mesne process.

You are, therefore, hereby notified that if this writ is served on you twenty or more days before the return day thereof you must make your defense on or before the return day or a *pro confesso* will be entered against you on the first Monday of March next; but if this writ is served on you within twenty days before the return day thereof you must make your defense on or before the first Monday of March next or a *pro confesso* will be entered against you on the first Monday of April next.

W. L. TRENT,
Clerk and Master,
By W. A. GALBRAITH,
Deputy C. & M.

A true copy.

[The Seal of the Circuit Court, District of East Tenn.]

Attest: H. H. TAYLOR, *Clerk,*
By J. T. CARTER, *D. C.*

44 [Endorsed:] No. 2. W. A. Galbraith, D. C. & M. No. 4417. Subpœna to answer. Nicholas Thouron *et al. vs.* E. T., V. & G. R'y Co. *et al.* In chancery, at Knoxville, Tenn. Issued 20 day of Dec. 1888. W. A. Galbraith, D. C. & M.

[Stamped:] Filed Apr. 1, 1889. H. H. Taylor, U. S. cir. c't cl'k.

Came on hand 20 day of Dec., 1888. Executed as commanded, and left a copy of this subpœna to answer with defendants, E. J. Sanford, on the 20 day of Dec., 1888, and with J. N. Mitchell, treasurer of East Tenn., Virginia & Georgia Railway Co., on the 21st day of Dec., 1888.

This Dec. 31st, 1888.

J. K. LOUIS, *Sher'ff.*

45 No. 3. No. 4417.

W. A. Galbraith, D. C. & M.

46 In the Chancery Court, Knoxville, Tennessee.

NICHOLAS THOURON, *et al.*
vs.
EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY, *et al.*

Bill and Exhibits.

Ingersoll & Peyton, Charles M. Da Costa, Samuel Dickson, for plaintiffs.

[Stamped:] Filed Apr. 1, 1889. H. H. Taylor, U. S. cir. c't cl'k.

In the Chancery Court, Knoxville, Tennessee.

NICHOLAS THOURON, C. SLIGO DE POTHONIER, Trading as C. de Pothonier & Co.; Frederick J. Burt, Trading as Frederick Burt & Co.; William J. Barr, and Edmund Allen, Plaintiffs,	Non-residents of Tennessee.
against	
EAST TENNESSEE, VIRGINIA AND GEORGIA Railway Company, a Corporation Existing under the Laws of the States of Tennessee and Georgia;	Having its principal office at Knoxville, in Knox County, Tennessee.
Richmond and West Point Terminal Railway and Warehouse Company, a Corporation Existing under the Laws of Virginia; John H. Inman, Samuel Thomas, John G. Moore, Calvin S. Brice, C. M. McGhee, T. M. Logan, George S. Scott, Alfred Sully, John Greenough, William L. Bull, Richard Irvin, Jr., George Coppell, Thomas P. Fowler, James E. Grannis, E. J. Sanford, W. J. Chisholm, Defendants.	All of whom are non-residents of Tennessee, except E. J. Sanford.

To the Honorable Henry R. Gibson, chancellor, &c.:

The bill of complaint of Nicholas Thouron, C. Sligo de Pothonier, trading as C. Sligo de Pothonier & Co.; Frederick J. Burt,
47 trading as Frederick Burt & Co.; and William J. Barr against The East Tennessee, Virginia and Georgia Railway Company, a corporation existing under the laws of the States of Tennessee and Georgia; The Richmond and West Point Terminal Railway and Warehouse Company, and John H. Inman, Samuel Thomas, John G. Moore, Calvin S. Brice, C. M. McGhee, T. M. Logan, George S. Scott, Alfred Sully, John Greenough, William L. Bull, Richard Irvin, Jr., George Coppel, Thomas P. Fowler, James E. Grannis, E. J. Sanford, and W. J. Chisolm.

Your orators complain and say:

First. That your orators are stockholders in the said East Tennessee, Virginia and Georgia Railway Company as follows: Nicholas Thouron is the owner of seven hundred shares of the common stock; C. Sligo de Pothonier, trading as aforesaid, is the owner of two thousand shares of the second preferred stock: Frederick J. Burt, trading as aforesaid, is the owner of two hundred shares of the second preferred stock and one hundred shares of the common stock; William J. Barr is the owner of two hundred shares of the common stock, and Edmund Allen is the owner of three hundred shares of

the second preferred and eleven hundred shares of the common stock; and they all have been the owners thereof for some months last past, and they file this bill on their own behalf and on behalf of all other stockholders in the East Tennessee, Virginia and Georgia Railway Company who are similarly situated, and who may choose to come in and share in the benefit and expense of this suit.

Second. That heretofore, to wit, upon the — day of —— A. D. 1888, your orators filed in your honorable court a bill of complaint against the East Tennessee, Virginia and Georgia Railway Company and others, wherein and whereby they set forth the relations of the said company to the Richmond and Danville Railroad Company and the Richmond and West Point Terminal Railway and Warehouse Company, and sought to enjoin the execution of a cer-
48 tain proposed lease to the said Richmond and Danville Railroad Company as by reference thereto, remaining of record, will more fully and at large appear. And your orators annex a copy of said bill hereto as Exhibit A, and pray that the same may be taken as a part hereof as if herein set forth at length, so far as the allegations therein contained may be pertinent to the relief hereby sought.

Third. That at the last annual election of the East Tennessee, Virginia and Georgia Railway Company, held November 21st, 1883, the persons named as directors in the nineteenth section of the original bill were re-elected, with the exception of Emanuel Lehman and Alfred Sully, who were replaced by E. J. Sanford and W. J. Chisholm.

Fourth. That the said Richmond and West Point Terminal Railway and Warehouse Company was chartered as a terminal railway and warehouse company, and is only entitled to exercise the powers properly incidental thereto and to acquire shares of railroads properly tributary to its business as a warehouse company, and it had no lawful power, therefore, to purchase, and has now no lawful authority to hold and own the shares of the capital stock of the East Tennessee, Virginia and Georgia Railway Company or to vote thereon.

Fifth. That the provision in the agreement of organization of the East Tennessee, Virginia and Georgia Railway Company, giving to the first preferred stockholders a right to elect a majority of the board of directors, is contrary to public policy, in violation of the laws of the State of Tennessee, and illegal and void.

Sixth. That the said purchase of the said $6,500,000 of the shares of the first preferred stock of the said East Tennessee, Virginia and Georgia Railway Company was made for the purpose of preventing competition between the line of the Richmond and Danville Railroad company and that of the East Tennessee, Virginia and Georgia Railway Company and to establish a monopoly, and the said
49 purchase was therefore against public policy, and the said terminal company ought not to be allowed to exercise the right of voting thereon or to control the affairs of a rival and competing railroad company in such a way as to establish and maintain a monopoly.

A purchase made for such a purpose is in no proper sense a purchase for investment, and the holders cannot vote upon the majority of shares so acquired and held for the object of securing and retaining control of a rival line without disregarding the public policy of the State as declared in its statutes and judicial decisions. What was bargained for and paid for was not the shares as such, but the control of the property, as is clearly shown by the price paid, which was nearly or quite one hundred per cent. of the par value of the stock, while the market value immediately before the buying began for the purpose of getting such control and immediately thereafter was not and is not now more than sixty to seventy-five per cent thereof. In like manner, the capital stock of the Georgia company, owning $4,000,000 or a majority of the stock of the Central Railroad and Banking Company of Georgia, was bought by the said Terminal Railway and Warehouse Company at a rate equal to about two hundred dollars per share, while the market value of the minority stock, debarred as it is of all chance of participating in the affairs of the company and virtually disfranchised, was and is only from $120 to $130 a share, the difference being the bonus paid for the purpose of dominating the company, and such bonus constituting an additional charge upon the business of the country, to be repaid necessarily from increased rates for travel and transportation. The method of obtaining the means to make such purchases further illustrates the manner in which the policy of the law is violated, the majority of the shares so acquired being generally and in these cases, in fact, pledged as collateral for a loan sufficient to repay the whole or the greater part of the purchase-money, so that the purchasers do not have their own capital invested nor depend upon the earnings of the company for profit, but upon the chance of dealing in the obligations of the company and the making of leases and guarantees to enhance the value of securities manufactured and acquired by them, or upon the securing of special privileges in the way of transportation, to unlawfully and unfairly enhance the profits of mines or mills in which they are interested, while the policy of the law is further violated by the fact that such control is indefinitely prolonged by means of trusts or combinations, so that the individual holders are deprived of all right of participation or share in the government of the corporation, and the perpetuity of an alien and inimical ownership and control, as enduring as the corporation itself, is created and maintained in lieu of a direction dependent for its continuance in office upon the approval of a large body of individual stockholders, ready and able to punish neglect or misconduct by their independent votes, while competing corporations are enabled to effect a virtual consolidation under circumstances which would render an actual consolidation or lease unlawful. Your orators therefore aver that the acquisition and use of a majority of the capital stock of a corporation in such manner and for such purposes are a fraud upon the rights of the individual stockholders, a perversion of the system established for its government, and an abuse of the franchises granted by the State.

Seventh. That the control of the East Tennessee, Virginia and

Georgia Railway Company secured thereby has, however, been actually used by the directors of the said company in their own private and individual interest or to promote the interests of other properties owned and controlled by them; and while your orators are unable, without having access to the books and records of the company, to specify all particulars of such mismanagement, and they ask leave to amend the present bill by adding such additional charges as shall from time to time be found necessary, your orators (as illustrating the way in which said directors have betrayed their trusts and misused the authority given to them for their own private ends) do enumerate the following:

1. The making of the proposed lease to the Richmond and Danville Railroad Company as set forth in the original bill of
51 complaint, said lease having been made to a rival company whose interest it would be to keep down gross earnings to the lowest point sufficient to yield the minimum rental guaranteed and to divert all trade below Chattanooga and above Morristown to its own line without adequate provisions having been inserted to prevent such diversion or to secure fair rates or an equitable division of revenue. Your orators further show that, although it is alleged that the so-called minority directors assented to and approved of the provisions of said lease, they took no pains to inform themselves as to the facts and did not consult with independent counsel or independent experts as to the provisions which ought to have been inserted in order to protect the line from the diversion of its business, and not only acted without the caution and vigilance which it was their duty to bestow upon the business in the making of the said lease, but even after their attention had been called to the facts they showed themselves so indifferent to the interests of the company and so incompetent to understand the character and effect of the instrument, while they had approved that they issued to the stockholders the circular, of which a copy is hereto annexed as part hereof, marked "Exhibit B."

Your orators further show that more than a month prior to the making of the said lease it was determined to create an issue of bonds of the East Tennessee, Virginia and Georgia Railway Company, secured by a second mortgage upon all its property. Said bonds were to bear five per cent. interest and were a good security which ought to have sold at a fair price, but owing to the discredit of the company by reason of the character of its management the bonds were sold to a syndicate at eighty-two and one-half per cent. In the said circular issued by so-called minority directors (Exhibit B) they alleged that the lease had improved the credit of the company "so that the sale of the improvement and equipment bonds authorized was effected," whereas, in point of fact, the sale by the company had been made more than a month before the date of the lease, and the only parties to profit by obtaining the guaranty by the Richmond and Danville Railroad Company were the then holders of the said bonds.

52 2. At the time the purchase of the said $6,500,000 of the capital stock of the said East Tennessee, Virginia and Georgia

Railway Company was agreed upon Samuel Thomas and Calvin S. Brice, the president and vice-president of the said East Tennessee, Virginia and Georgia Railway Company, claimed to be the owners of the Southern Trust Company, which was the holder of a majority of the capital stock of the Mobile and Birmingham Railway Company, and alleged that there had been an agreement by which the corporation defendant was to purchase the same from them at the price of $810,000. When asked to produce the records of the company showing the transaction they then pretended that it had been agreed upon orally between themselves and the executive committee, which said executive committee was composed of themselves and one John G. Moore, another member of the board. They were at the time also or about to become members of the board of directors of the Terminal Railway and Warehouse Company, as was also George S. Scott, then the president of the Richmond and Danville Railroad Company, and he and certain of his friends, emulating instead of reprobating their conduct, refused to vote, as members of the board of the Terminal Railway and Warehouse Company, for the purchase of the said East Tennessee, Virginia and Georgia Railway Company stock and to approve of the purchase of the capital stock of the Mobile and Birmingham Railway Company unless the Terminal Railway and Warehouse Company should at the same time buy from him and his friends the income bonds of the Washington, Ohio and Western Railroad Company, which was at the time not earning interest upon its first-mortgage bonds, and the income bonds and stock of which were of no value, while other directors of the Terminal Railway and Warehouse Company objected to the purchase unless certain minority stock of the Richmond and Danville Railroad Company owned by them should be purchased by the exchange of five shares of Terminal Railway and Warehouse Company stock for one share of the capital stock of the Richmond and Danville Railroad Company, although at the time said shares of the Richmond and Danville Railroad
53 Company were not worth that much, so that the purchase by the Terminal Railway and Warehouse Company of the preferred stock of the East Tennessee, Virginia and Georgia Railway Company was the result of a combination whereby the assent of different factions of the board was secured by the purchase from them of securities at more than they were worth, and in particular Samuel Thomas and Calvin S. Brice were paid the $810,000 they demanded for the majority of the stock of the Mobile and Birmingham Railway Company, which was at the time practically worthless, the other directors of the East Tennessee, Virginia and Georgia Railway Company, who were also directors of the terminal company, knowing that the property was practically worthless, and that the alleged contract had been made under such circumstances that it could not have been or ought not to have been enforced. Your orators expressly aver and charge that all the then directors of the East Tennessee, Virginia and Georgia Railway Company either had actual knowledge of all the facts or of such facts as to put them upon inquiry at the time or immediately after such purchase was made.

The majority of members of the board, in January and February, 1887, at the time of the purchase of the East Tennessee stock and of the Mobile and Birmingham stock, were substantially the same as at present, but the so-called minority directors did not become members of the board till November, 1887.

3. The said Mobile and Birmingham Railway Company was not able to earn its operating expenses, its road was unfinished, and the company was without credit, and thereupon it was agreed that the company defendant should indorse the bonds of the Mobile and Birmingham Railway Company at the rate of $20,000 per mile, or $3,000,000. The road was to run from Selma, in the State of Alabama, to Mobile, to which last-mentioned city the East Tennessee, Virginia and Georgia Railway Company already had access, so that it was of no considerable value to the East Tennessee, Virginia and Georgia Railway Company for business purposes, and it should have been built at a cost of not over $12,000 per mile; but the
54 guaranty of the East Tennessee, Virginia and Georgia Railway Company was indorsed upon the said bonds, and they were put in the hands of the firms of Poor & Greenough and E. Sweet & Co. for sale. The terms of the agreement for the negotiation of the said bonds as reported to your orators were exceedingly disadvantageous to the East Tennessee, Virginia and Georgia Railway Company, but your orators are not fully informed in regard thereto and pray that the parties may be required to make full discovery respecting the same. At or about that time John G. Greenough, of the firm of Poor & Greenough, and William L. Bull, of the firm of E. Sweet & Co., became members of the board of the corporation defendant and have so continued until the present time. The agreement to guarantee the said bonds was never approved by the stockholders, and your orators aver that even if the same can be enforced by *bona fide* holders for value without notice any bonds in the hands of the company or of the directors should be impounded, and that as against the guaranty on those sold to the public, if valid, the directors of the company should be required to indemnify and save harmless the company. Your orators further show that in addition to the execution of the said guaranty the East Tennessee, Virginia and Georgia Railway Company has advanced about $500,000 to the said Mobile and Birmingham Railway Company, and the said company is further indebted in the sum of about $300,000, and it is now proposed to put an additional second mortgage upon the said road of $5,000 per mile, and that the money derived from the sale of the first-mortgage bonds and from these loans cannot have been legitimately expended in the construction of the said road, which is still incomplete, or used for any proper purpose in connection therewith.

4. Five hundred thousand dollars in bonds of the corporation defendant were paid for the capital stock of the Walden Ridge Railroad Company, of which the president, Mr. E. R. Chapman, was at the time a member of the firm of Moore & Schley, of which
55 firm John G. Moore, a director in the corporation defendant, was a partner, and said property was worthless and was in

reality a purchase from the firm of Moore & Schley in order to secure the approval of the said Moore as a director to the policy of the board.

5. Samuel Thomas, the president, Calvin S. Brice, the vice-president, and E. J. Sanford, a director, of the East Tennessee, Virginia and Georgia Railway Company, were interested as owners of the stock or bonds, or both, of the Knoxville and Ohio Railroad Company, and procured the purchase of a majority of the capital stock of the said company by the corporation defendant and the guaranty of its bonds, and finally a lease of its property upon terms disadvantageous to the East Tennessee, Virginia and Georgia Railway Company for the purpose of promoting their own private interests.

6. The said Thomas, Brice, Sanford, and others are interested in certain mineral lands in the State of Tennessee, and had caused to be constructed a short line of railway, known as the Coal Creek and New River railroad, of which company the said E. R. Chapman, of the firm of Moore & Schley, was president, and, although Heck and Petree and others had been engaged in mining and shipping coal over the said line and over the Knoxville and Ohio to the East Tennessee railroad immediately after acquiring the said mineral lands, the said Samuel Thomas, Calvin S. Brice, and their associates issued orders to the superintendent of the East Tennessee Company not to furnish cars to the said Heck and Petree or to allow them to ship any coal over the said road. The facts in regard to the said transaction all appear of record in the proceeding before the Interstate Commission, and a copy of the opinion of the said commission in the said case is hereto annexed as Exhibit C, which your orators pray may be deemed and taken as part hereof.

Eighth. That the majority of the directors have an interest by reason of their ownership of the stock of the Terminal Rail-
56 way and Warehouse Company and the Richmond and Danville Railroad Company directly adverse to the interests of the East Tennessee, Virginia and Georgia Railway Company, and the minority directors have shown their inability to protect the interests of the stockholders, and the instances already specified of fraudulent dealing with the company, in which some of the directors have taken advantage of their position as officers and directors, show that the present board, with a majority so unscrupulous, cannot be safely entrusted with the management and control of the property. It is true that at the late annual election they were able to secure their re-election by a large vote; but, owing to the condition of the property and their own virtual disfranchisement by the operation of the reorganization agreement, the outside stockholders had grown indifferent, believing that the control of the board, by reason of the ownership of the majority of the first preferred stock, rendered it hopeless to enter into any contest with the present management, and from the time that the lease was executed down to the day of the election the books of the company were closed, and it was impossible to communicate with the stockholders at large so as to secure their co-operation; nor would the present movement have been attempted had it not been for the execution of the said lease

and the turning over the property of the company, which was believed by your orators would result in the absolute destruction of their interests.

Your orators therefore pray that the Richmond and West Point Terminal Railway and Warehouse Company be enjoined and restrained from voting upon the shares of the first preferred stock of the East Tennessee, Virginia and Georgia Railway Company held by it, and that the provision in the certificate of reorganization giving to the first preferred stock the right to elect a majority of the board of directors be declared contrary to public policy and in violation of the laws of the State of Tennessee and null and void, and that the holders of the stock in the said company be declared entitled to a vote on each share of stock held by them, whether
the same be of the character known as the first preferred,
57 second preferred, or common stock, and that a stockholders'
meeting be held under the direction and supervision of the court, and that the individual defendants or such of them as at final hearing shall be found to be justly liable therefor shall be ordered and decreed to make good to the corporation defendant the several sums which they have unlawfully and unjustly appropriated to their own use, and that in particular Samuel Thomas and Calvin S. Brice be decreed to refund the sum of $810,000, with interest, paid them on account of the purchase of the Mobile and Birmingham Railway Company, and that they and such other of the directors as shall be found justly chargeable therewith shall be required to refund all moneys loaned and advanced to the said company, and to surrender for cancellation all bonds in their custody or possession or under their control, and to indemnify and save harmless the corporation defendant from and against this liability on the guaranty upon the bonds in the hands of *bona fide* holders for value without notice, and that the shares of the capital stock of the Mobile and Birmingham Railway Company be returned to the said Thomas and Brice and the said transaction be rescinded and canceled and the parties restored, so far as possible, to the position which they would be in if the said contract had never been made, and that full discovery be made in regard to the purchase of the Walden Ridge Railroad Company and the Knoxville and Ohio Railroad Company and the execution of the lease of the Knoxville and Ohio railroad, and that your orators be allowed, after obtaining such discovery, to pray for such further relief in regard thereto as the facts and circumstances of the case shall render just and equitable, and that the officers and employés of the company be enjoined and restrained, temporarily until hearing and perpetually thereafter, from withholding from the shippers upon the line of the Coal Creek and New River railroad the same facilities as are afforded and furnished to the mines of the said Thomas, Brice, and Sanford, and that a receiver be appointed to take charge, custody,
and possession of the railroad property and franchises of the
58 said East Tennessee, Virginia and Georgia Railway Company
until, by the lapse of time or otherwise, the holders of the second preferred or common stock shall have equal opportunity, in

proportion to their several holdings, with the Richmond and West Point Terminal Railway and Warehouse Company and other holders of the first preferred stock to elect directors to represent and protect their interests.

And your orators pray for such other, further, and different relief as the nature of the case may require.

This is the first application for injunction in this cause.

INGERSOLL & PEYTON,
CHARLES M. DA COSTA,
SAMUEL DICKSON,
For Plaintiffs.

59 EXHIBIT B.

To the second preferred and common shareholders of the East Tennessee, Virginia & Georgia Railway Co:

The undersigned, directors in the East Tennessee, Virginia & Georgia Railway Company, representing exclusively the second preferred and common stock, deem it proper to take some notice of a circular which has lately been addressed to the stockholders criticising the lease recently made to the Richmond & Danville R. R. Co., which is to be submitted to the shareholders for approval on the 22d prox. Each of the principal allegations in the circular referred to contains errors either of fact or of inference.

It appears from the books of the East Tennessee Company that all the signers of the circular (excluding a London arbitrage firm) own less than 5,000 shares of stock, while the undersigned hold their seats in the board by the election of more than 374,000 shares of junior securities. A strong presumption is created that the action of the signers of the circular is dictated by other interests than the good of the East Tennessee Company.

The lease to the Richmond & Danville R. R. Co. was prepared with the greatest care for the protection of the interests of the junior securities of the East Tennessee, Virginia & Georgia Railway Company, and received the unanimous approval of their directors, who present the following summary of the considerations influencing their action, and which, in their belief, should lead the stockholders to vote in its favor:

1. It secures payment of 5% dividend for the year ending June 30, 1888, and a guarantee of continuance thereafter, so that by June, 1889, the preferential voting power of the first preferred stock will disappear forever, and the junior securities have only to exert their voting rights to maintain the entire board in their interest solely.

60 2. The credit of the company was at once benefited, so that the sale of the improvement and equipment bonds authorized was effected, and the new capital will be largely invested in engines and cars so vitally needed for business and which will bring an immediate and important accession of gross earnings.

3. No bonds or new capital can be issued without consent of the

East Tennessee Company; hence the fixed charges as they exist at the time of the lease are defined permanently, and no pretext or conditions can arise to prevent distributing amongst the junior securities any surplus of earnings which may be shown from the operations. The essential principle of the lease is to assure the juniors beyond peradventure the entire benefit of further progress and development of the company and to provide such conditions of further capital, credit, and business as shall materially stimulate the existing natural progress of the region.

4. The terms of the lease leave no room for difference of opinion as regards the question of net earnings, the Danville being charged simply with the operation of the line and returning to the officers of the East Tennessee 33% of the gross moneys received from operations. In two years from January 1 this becomes 34%; in two more years, 35%; in three years more, 36%, and in three years more, 37%. Thus a double prospect of benefit is held out in the future for the juniors—first, by increase of gross earnings, and, second, by increase of net profit available, even should gross earnings remain stationary.

5. The rental thus payable in a percentage of gross earnings is guaranteed never to be less than all the fixed charges and 5% on the first preferred. Thus the second preferred is brought immediately in the line of dividends and the company is secured against any possible legal complications or embarrassments from debt.

61 6. Any and all income other than from operations will belong to the East Tennessee Company and be available for the junior securities. Thus its ownership in the stock of the Memphis & Charleston, Knoxville & Ohio, and other proprietary roads may be expected to become remunerative and be of direct advantage to the juniors.

7. The lease guarantees maintenance of the road in its present condition and the replacement of any equipment or property used up. An annual examination by the East Tennessee board is provided for to enforce this provision. The rental is paid to the East Tennessee treasurer, and provision is made for maintaining the East Tennessee organization. Therefore no doubt can arise as to the application of the revenues to the East Tennessee liabilities.

8. The lease provides for the maintenance of all existing contracts with other roads, securing thereby every facility for business which at present exists with the Norfolk & Western. A covenant against any diversion of business is also embodied.

9. The lease provides for the return of the railroads and other property demised "in at least as good order and condition as the reasonable use and wear thereof will permit and with such additions, betterments, or improvements as shall have been made thereto," and that the lessee shall keep, preserve, and maintain the said railroad in as good working condition and repair as the same may be delivered to it.

Finally, the placing of the operations of both companies under a harmonious management will enable maintenance of all rates, so that existing business may be relied upon to give larger income.

The $2,500,000 of Memphis & Charleston stock should become dividend-paying as soon as the stockholders will consent to an issue of bonds to make the necessary capital improvements upon the
62 road, to which surplus earnings are now of necessity being devoted. The obstacle which the opposition of the minority stockholders of Memphis & Charleston has presented is liable to cease at any time.

The Knoxville & Ohio line has earned a handsome surplus the past year, and it seems reasonable to expect that a division of the surplus will be practicable at an early day.

The above considerations leave no doubt in our mind that the lease makes a vast relative improvement in the position of the juniors as compared with that they occupied before the lease. The same impression was created in the mind of every member of the board, whether on the side of the majority or minority.

Should the East Tennessee charter be declared void, as is prayed for in the suit of the opponents of the lease, what will be the value of the second preferred and common stocks? A matter to be thought of by holders before confiding their interests to the parties bringing the suit against the company.

Any further information or explanation will be given by any of the undersigned.

GEORGE COPPELL, 24 Exchange Place.
JOHN GREENOUGH, 36 Wall street.
WM. L. BULL, 38 Broad street.
RICHARD IRVIN, JR., 37 William street.
THOMAS P. FOWLER, 16 Exchange Place.
JAMES E. GRANNISS, 7 Nassau street.
C. M. McGHEE, 10 Wall street.

New York, November 19th, 1888.

63 EXHIBIT C.

(Interstate Commerce Reports, vol. I, page 775.)

JOHN D. HECK and L. J. A. PETREE, Composing Firm of Heck & Petree,
vs.
EAST TENNESSEE, VIRGINIA AND GEORGIA R. Co., KNOXville and Ohio R. R. Co., Richmond and Danville R. R. Co., Richmond and West Point Terminal and Warehouse Co., Coal Creek and New River R. R. Co. } No. 78.

A railroad charter by the State of Tennessee owns a short road wholly in that State, but never owned any rolling stock nor operated its road. The road was used and operated as a means of conducting interstate traffic in coal by companies owning connecting interstate roads. Held—

1. That the short road is one of the facilities and instrumentalities of interstate commerce, and as such is subject to the provisions of the act to regulate commerce.

2. In respect to such traffic the duties of such a road to the public are the same without respect to ownership, corporate control, the authority or means of its construction.

3. As one of the "instrumentalities of shipment or carriage" it must be accessible to all interstate shippers on equal and reasonable terms. The public cannot be deprived of this right by the separate or joint action of defendants.

4. The traffic in question is interstate traffic. The companies conducting it use this short road as a facility to such
64 traffic. They cannot be permitted to use it for purposes of discrimination between mine owners on its line.

5. The claim for pecuniary damages presents a case at common law, in which defendants are entitled to a jury trial.

(Heard December 9th, 1887; decided February 15th, 1888.)

Complaint alleging discrimination in furnishing cars for transportation of coal and demanding pecuniary damages. See complaint, *ante*, 498.

Messrs. Webb & McClung and S. F. Phillips, for petitioner; Messrs. W. M. Baxter and E. M. Johnson, for defendants, East Tennessee, Virginia and Georgia Railway Company and Knoxville and Ohio Railroad Company; Mr. J. T. Worthington, for defendants, Richmond and Danville Railroad Company and Richmond and West Point Terminal and Warehouse Company; Mr. E. R. Chapman, for defendant, Coal Creek and New River Railroad Company.

Report and Opinion of the Commissioner.

MORRISON, *Commissioner:*

The complaint against the defendants is that on April 15th, 1887, and continually since then they refused to transport coal which up to that time they had transported for the complainants from their mine, in the Coal Creek coal-field, in the State of Tennessee, to their customers in North Carolina and other States; that while so refusing to carry complainants' coal the defendants carried and continued to carry coal from said coal-field since April 15th, 1887, as they did before for other miners and shippers; that in respect of the traffic in coal the defendants unjustly discriminate against the complainants and refuse to afford them the reasonable and equal advantages for forwarding coal afforded to others Complainants ask that their rights as shippers of coal may be secured to them by order of this commission, and that large pecuniary damages may be awarded to them which they claim for their alleged losses by non-shipment of their coal.

65 The Coal Creek and New River Railroad Company, answering separately, denies that it discriminates unjustly or at all against the complainants; denies that it refused to afford them any facilities afforded to other shippers of coal on the line of defendant's road, and denies that it refused the use of its track to the plaintiffs by the stoppage of the running thereon of engines and cars of

other companies, except by general refusal, which applied to any and all use of its road or track. It alleges that any use of said track subsequent to such general refusal has been under an arrangement open alike to all shippers, and that no application has been made by complainants for any arrangement.

The East Tennessee, Virginia and Georgia Railway Company and The Knoxville and Ohio Railroad Company, two of the defendant companies, jointly answering, deny the existence of any facts which gives the right to or makes it the duty of said last-named company to operate the road of said Coal Creek and New River Company as against its consent and express orders; deny that they or either of them have ever managed or controlled said Coal Creek and New River road or run cars or engines over it at any time except by its acquiescence and authority. They aver that subject to such acquiescence the Knoxville and Ohio Railroad Company heretofore ran its engines and cars and engines and cars under its control over the line of said Coal Creek and New River road to accommodate coal miners on the line thereof, for which service a switching charge was made; that such service was discontinued on all of its road by order of said Coal Creek and New River Company, and with its authority and acquiescence restored on so much of its road as extends to the mine of the Excelsior Coal Company and within one-fourth mile of complainants' mine; and except as above stated these defendants deny every other allegation of complainants, and deny jurisdiction of the commission to entertain the complaint.

The other defendants, The Richmond and Danville Railroad Company and The Richmond and West Point Terminal and Warehouse Company, each for itself, make a general denial of all that is
66 alleged against them or either of them in the complaint, which, on the hearing, is, by consent of parties, dismissed as to the two defendants last named.

From the testimony of witnesses and the uncontroverted statements made in the complaint and answers thereto the facts are found to be as follows:

The complainants, under the firm name of Heck & Petree, were from January 1st, 1886, to April 15th, 1887, engaged in mining and selling coal in the Coal Creek — field, in Anderson and Campbell counties, in the State of Tennessee, and in shipping coal from said coal-field over the roads of the defendants to markets and customers in North Carolina and other States. On and after April 15th, 1887, said railroad companies refused to take or ship over their roads any coal of said firm.

The mine of said firm is one of several mines located on the line of the Coal Creek and New River Railroad Company's road, and coal shipped from the mine of said firm to market must be carried over said last-named road to the Knoxville and Ohio road; over it to its junction, at Knoxville, with the East Tennessee, Virginia and Georgia road; over said last-named road and its connections to the place of destination. The only outlet or means of reaching markets for coal mined in said Coal Creek coal-field is over the line of the Knoxville and Ohio railroad.

The Coal Creek and New River Railroad Company is a corporation chartered by the State of Tennessee. It owns a road or track three miles long, but never owned cars or other rolling stock nor operated its road. The rolling stock used on its road was and is owned by the Knoxville and Ohio Railroad Company, which has done all the carrying done on said Coal Creek and New River road from the time it was built, in 1880–'81, up to April 15th, 1887, when carrying on it was refused for complainants, but continued for other shippers.

A formal order was issued by the Knoxville and Ohio *River* Railroad Company discontinuing and forbidding further operations on the Coal Creek and New River railroad on and after April
67 15th, 1887. Operations by said Knoxville and Ohio Railroad Company were soon thereafter renewed on that part of said road extending to the Excelsior coal mine and within one-fourth of a mile of complainants' mine, and occasional transfers were made over the entire road, but all transportation was refused to complainants, who had orders for large quantities of coal, which they offered for shipment over defendants' roads.

The East Tennessee, Virginia and Georgia Railway Company and the Knoxville and Ohio Railroad Company are separate corporations, but their roads are part of the same system and are under substantially the same management. The former owns more than half of the capital stock of the latter and the latter owns nearly one-half the capital stock and (together with parties interested in its own road) owns a controlling interest in the capital stock of the Coal Creek and New River Railroad Company. The three companies were and are in accord and have acted in concert in the refusal to carry complainants' coal on the fifteenth day of April, 1887, and from then until now

The Knoxville and Ohio road extends from its junction with the East Tennessee, Virginia and Georgia road, at Knoxville, northwardly to the Kentucky State line, and reaches said coal-field at Coal Creek station, from which a "Y"-shaped switch extends into said coal-field and connects with said Coal Creek and New River road. Said coal-field is about eight miles in extent along the face of Cumberland Mountain, fronting to the southeast. A large and considerable tract in the northeast part of said coal-field is and was before said Coal Creek and New River railroad was built owned by John M. Heck, lessor of complainants, while another large tract further to the northeast was owned by said John M. Heck and the Knoxville and Ohio Railroad Company jointly. The southwest part of said coal-field is owned by other proprietors, among them some of the officers and persons interested in the defendants' roads.

The "Y" switch from Coal Creek station did not and does not so extend into said coal-field as to reach the part owned by said
68 John M. Heck, and the said Coal Creek and New River road was built by the Knoxville and Ohio Railroad Company and said Heck from said switch to and along that part of said coal-field owned by said John M. Heck, thence to and along the part owned jointly by him and the Knoxville and Ohio Railroad Company.

John M. Heck was president of the Coal Creek and New River Railroad Company from the time its road was built up to October, 1886, when he was succeeded by E. R. Chapman.

When Heck had been superseded it was claimed by the stockholders and others interested in the defendant companies that during his presidency he had used said road and allowed his lessees to use it without paying or causing to be paid anything to said company for such use of its road. The action taken by the defendants in respect of the refusal to transport the coal of said firm was taken to force said John M. Heck to a settlement with said company by hindering his lessees in their mining operations.

On these ascertained facts it is insisted on behalf of the Coal Creek and New River Railroad Company that it is not a common carrier, and that its road is not any part of a line for continuous carriage from one State or Territory to another State or Territory.

This view is apparently based on the fact that the road of this company is wholly in the State of Tennessee, from which the company derives its corporate existence; that it owns no engine or cars, has not operated, and does not of itself operate its road.

It is true that coal taken over its road has been drawn by the engines and carried in the cars of the other defendants, but for all practical purposes the road of this defendant is as much a part of the continuous line over which coal from plaintiffs' mine goes to market as is the "Y" switch which connects this road with the roads of the other defendant companies. In the history of its construction and of its use it was always treated as a part of the continuous line and one of the instrumentalities by which the coal from this mine in Tennessee was expected to reach and did reach the markets in the other States.

69 If this road is one of the means by which commerce in coal is carried on between Tennessee and other States as an instrumentality of interstate commerce, its duties to the public under the act to regulate commerce in respect to such traffic are the same, without respect to its ownership, coporate control, the authority or means of its construction.

By the first section of the act to regulate commerce the term "railroad" is made to include "all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease;" and the term "transportation" is made to include "all instrumentalities of shipment or carriage."

This road has been operated by the Knoxville and Ohio Railroad Company from the time it was built. This has been done, as alleged in defendant's answer, by agreement or contract since April 14th, 1887. Presumably it was so done before. This would seem to bring this road within the reason of the provisions of the act to regulate commerce relating to lines for continuous carriage from one State or Territory to another State or Territory, and make it, in connection with the roads of the other defendants, a part of such a line.

Yet, in the view we take of this case, the relief asked by complainants is not dependent upon this Coal Creek and New River Com-

erick Burt & Co., then and now aliens and subjects of the Queen of Great Britain, and William J. Barr and Edmund Allen, then and now citizens of the State of Pennsylvania, brought the suit, No. 4417, which has since been removed to your honorable court, against the East Tennessee, Virginia and Georgia Railway Company, then and now a corporation existing under the laws of the State of Tennessee, and the Richmond and Danville Railroad Company and the Richmond and West Point Terminal Railway and Warehouse Company, then and now corporations existing under the laws of the State of Virginia, and John H. Inman, Samuel Thomas, John G. Moore, Calvin S. Brice, C. M. McGhee, George S. Scott, W. J. Chisholm, Alfred Sully, John Greenough, Wm. L. Bull, Richard
135 Irvin, Jr., George Coppel, Thomas P. Fowler, and James E. Grannis, then and now citizens of the State of New York, and T. M. Logan and John S. Barbour, then and now citizens of the State of Virginia, and E. J. Sanford, then and now a citizen of the State of Tennessee.

Third. That subsequently one A. G. Sharp was improperly and collusively made or joined a party plaintiff without communication with the solicitors of the original plaintiffs, nor has he since taken any part in the prosecution of the said suit. The said Sharp was so improperly and collusively made a party plaintiff, at the instance of the defendants, for the sole purpose of endeavoring to create a case removable to this court.

Fourth. Your petitioner further shows that it is not true that from prejudice or local influence the defendants would not be able to obtain justice in the chancery court of Knox county, Knoxville, Tennessee.

Fifth. Your petitioner further shows that it appears upon the face of the petition for removal and the record that the suit is one not removable to this court under the last clause of the second section of the act of March 3d, 1887.

Your petitioner therefore prays that the said case be remanded.

And your petitioner will ever pray.

136 UNITED STATES OF AMERICA,
East. Dist. of Pennsylvania, City and County of Philadelphia, } *ss:*

Nicholas Thouron, being sworn according to law, deposes and says that the facts set forth in the above petition so far as they are stated upon his knowledge are true, and so far as stated upon the information of others he believes them to be true.

NICHOLAS THOURON.

Witness my hand and notarial seal this 8th day of March, 1889.

SAMUEL PAUL, [SEAL.]
U. S. Commissioner.

A true copy.

[The Seal of the Circuit Court, District of East Tenn.]

Attest: H. H. TAYLOR, *Clerk,*
By J. T. CARTER, *D. C.*

137 [Endorsed:] No. 4417. Ex. "A." Thouron *et al. vs.* E. T., Va. & Ga. R'y Co. *et al.* Petition to remand.
[Stamped:] Filed Apr. 1, 1889. H. H. Taylor, U. S. cir. c't cl'k.

138 No. 4417.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

NICHOLAS THOURON *et al.*
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

Surmotion to Remand.

To the honorable the judges of the circuit court of the United States for the northern division of the eastern district of Tennessee:

And now, March —, A. D. 1889, Nicholas Thouron, Frederick J. Burt, trading as Frederick Burt & Co.; William J. Barr, Edmund Allen, and Edmund P. Dwight, by Ingersoll & Peyton, their solicitors, move to remand the above case to the chancery court of Knox county, Tennessee, for reasons heretofore filed, and beg leave to assign the following additional reasons:

First. Because the said A. G. Sharp was improperly and collusively joined as a party plaintiff to this suit (No. 4417) for the purpose of creating a case removable to this court from the said State court, and has not united with these plaintiffs at their request or with their consent nor for the *bona fide* purpose of prosecuting the said suit, but at the instance of defendants to enable them to oust the said State court of its jurisdiction and to remove said suit to this court upon the fraudulent semblance of a controversy between him and said defendants.

139 Second. Because the said A. G. Sharp was not a party to the suit at the commencement thereof.

Third. Because the said A. G. Sharp is not now and never has been a party plaintiff, inasmuch as he has not complied with the terms and conditions precedent upon which he was permitted to become a party plaintiff thereto, in this, that he had not at the time of the presentation and filing of said petition for removal signed and united in the bond of the plaintiffs for the prosecution of this suit in the said chancery court of Tennessee, as required by the terms of the order permitting him to become a party.

Fourth. Because the said A. G. Sharp did not become a party to the said suit before the trial thereof.

Fifth. Because there is no matter in dispute between the said A. G. Sharp, citizen of Tennessee, plaintiff, and the said Richmond and Danville Railroad Company and The Richmond and West Point Terminal Railway and Warehouse Company, citizens of Virginia, defendants, which exceeds, exclusive of interest and costs, the sum or value of $2,000.

pany being a common carrier or upon its road being a part of a line for continuous carriage to other States.

Whatever else this road may or may not be it is one of the means and facilities for shipment to and over lines from complainants' and other mines in Tennessee to market in other States. It is one of the "instrumentalities of shipment or carriage" included in the term transportion to which the act to regulate commerce applies. As such it must be open and accessible alike to all shippers and on equal and reasonable terms. This is a right belonging to the public of which it cannot be deprived by the separate act or control of any one of the defendants nor by the act of any or all of them combined.

The other defendant companies insist that they have no control over the Coal Creek and New River Company, and deny
70 that they have any legal right to operate or owe any duty to the public which requires them or either of them to operate its road without the consent and against the express orders of said Coal Creek and New River Company. Neither denying nor admitting their legal obligations to do so, they aver readiness to carry coal over said road with the acquiescence of the said New River Company, which acquiescence they claim to have had in all the carrying done over its road. This road is included in the term "railroad" or the term "transportation," or both, as defined in the act to regulate commerce. When the defendants are permitted to make use of and to control it for their own purposes they have no legal right in doing so to refuse impartial accommodation. That such refusal would subject it to responsibility to the State laws is not questioned, and whether the company, as owner of the road, would be subject to the jurisdiction of this commission is therefore not important. The East Tennessee, Virginia and Georgia Company operating its own line and the line of the Knoxville and Ohio Company, is an interstate road, and the traffic in question is interstate traffic. This short road is made use of by the other roads as a mere facility to such traffic. They cannot be permitted to make use of it or any part of it for the purposes of discrimination as between the mine-owners upon it. The attempt to shelter themselves behind the action of the owners of the short road is but a pretense. The interstate roads control the other, and they cannot be allowed to abuse that control to oppress the public or any part of it.

The "Y" switch to the coal-field did not and does not extend as far up as the mine of complainants on the coal land owned by the lessor separately or jointly with the defendants, Knoxville and Ohio Company. To reach these lands their owners, Heck and the Knoxville and Ohio Railroad Company, built the New River road. Previous to October, 1886, Heck was president of the New River Company. The Knoxville and Ohio Company operated the Coal Creek and New River Company's road until April 15th, 1887, for all shippers, and since then for all except complainants. Since it was built new mines have been opened and investments
71 made for the development of mines in view of the transportation which this road afforded and of which it is a necessary

part; it is neither good faith nor legally right to deny its use to the sole purpose of its construction.

The misunderstanding and disagreement between Heck and the stockholders or others interested in the defendants' roads has furnished a pretext for but does not justify the illegal acts of defendants in refusing to transport the coal of complainants, which was done to bring Heck to terms. The public, of which the complaining firm is a part, cannot wait for its rights while stockholders or persons interested in the defendant companies adjust their accounts or settle their differences.

The complainants and other miners on the line of said Coal Creek and New River road are entitled to have their coal carried over it to its connecting road and thence to destination.

The claim for pecuniary damages made by complainants was not entertained on the hearing, because it presents a case at common law in which the defendants are entitled to a jury trial.

It is therefore found that the conduct of the defendants in failing and refusing to receive coal for interstate transportation when tendered by complainants was in contravention of the provisions of the act to regulate commerce; and it is ordered that said defendants and each of them forthwith cease and desist from such failure and refusal, and henceforward receive and forward coal when so offered for transportation on any part of the line of said Coal Creek and New River railroad upon just, reasonable, and equal terms.

A true copy.

Attest:

[The Seal of the Circuit Court, District of East Tenn.]

H. H. TAYLOR, *Clerk.*
By J. T. CARTER, *D. C.*

(Pages 72 to 133, inclusive, Exhibit A to Bill, omitted in printing.)

134 No. 4417.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

NICHOLAS THOURON *et al.*
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

Petition to Remand.

To the honorable the judges of the circuit court of the United States for the northern division of the eastern district of Tennessee:

The petition of Nicholas Thouron respectively represents—

First. That your petitioner, who then was and still is a citizen of Pennsylvania, and, in conjunction with C. Sligo de Pothonier, trading as C. de Pothonier & Co., and Frederick J. Burt, trading as Fred-

erick Burt & Co., then and now aliens and subjects of the Queen of Great Britain, and William J. Barr and Edmund Allen, then and now citizens of the State of Pennsylvania, brought the suit, No. 4417, which has since been removed to your honorable court, against the East Tennessee, Virginia and Georgia Railway Company, then and now a corporation existing under the laws of the State of Tennessee, and the Richmond and Danville Railroad Company and the Richmond and West Point Terminal Railway and Warehouse Company, then and now corporations existing under the laws of the State of Virginia, and John H. Inman, Samuel Thomas, John G. Moore, Calvin S. Brice, C. M. McGhee, George S. Scott, W. J. Chisholm, Alfred Sully, John Greenough, Wm. L. Bull, Richard
135 Irvin, Jr., George Coppel, Thomas P. Fowler, and James E. Grannis, then and now citizens of the State of New York, and T. M. Logan and John S. Barbour, then and now citizens of the State of Virginia, and E. J. Sanford, then and now a citizen of the State of Tennessee.

Third. That subsequently one A. G. Sharp was improperly and collusively made or joined a party plaintiff without communication with the solicitors of the original plaintiffs, nor has he since taken any part in the prosecution of the said suit. The said Sharp was so improperly and collusively made a party plaintiff, at the instance of the defendants, for the sole purpose of endeavoring to create a case removable to this court.

Fourth. Your petitioner further shows that it is not true that from prejudice or local influence the defendants would not be able to obtain justice in the chancery court of Knox county, Knoxville, Tennessee.

Fifth. Your petitioner further shows that it appears upon the face of the petition for removal and the record that the suit is one not removable to this court under the last clause of the second section of the act of March 3d, 1887.

Your petitioner therefore prays that the said case be remanded.

And your petitioner will ever pray.

136 UNITED STATES OF AMERICA,
East. Dist. of Pennsylvania, City and County of Philadelphia, } *ss:*

Nicholas Thouron, being sworn according to law, deposes and says that the facts set forth in the above petition so far as they are stated upon his knowledge are true, and so far as stated upon the information of others he believes them to be true.

NICHOLAS THOURON.

Witness my hand and notarial seal this 8th day of March, 1889.

SAMUEL PAUL, [SEAL.]
U. S. Commissioner.

A true copy.

[The Seal of the Circuit Court, District of East Tenn.]

Attest: H. H. TAYLOR, *Clerk,*
By J. T. CARTER, *D. C.*

137 [Endorsed:] No. 4417. Ex. "A." Thouron *et al. vs.* E. T., Va. & Ga. R'y Co. *et al.* Petition to remand.
[Stamped:] Filed Apr. 1, 1889. H. H. Taylor, U. S. cir. c't cl'k.

138 No. 4417.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

NICHOLAS THOURON *et al.*
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

Surmotion to Remand.

To the honorable the judges of the circuit court of the United States for the northern division of the eastern district of Tennessee:

And now, March —, A. D. 1889, Nicholas Thouron, Frederick J. Burt, trading as Frederick Burt & Co.; William J. Barr, Edmund Allen, and Edmund P. Dwight, by Ingersoll & Peyton, their solicitors, move to remand the above case to the chancery court of Knox county, Tennessee, for reasons heretofore filed, and beg leave to assign the following additional reasons:

First. Because the said A. G. Sharp was improperly and collusively joined as a party plaintiff to this suit (No. 4417) for the purpose of creating a case removable to this court from the said State court, and has not united with these plaintiffs at their request or with their consent nor for the *bona fide* purpose of prosecuting the said suit, but at the instance of defendants to enable them to oust the said State court of its jurisdiction and to remove said suit to this court upon the fraudulent semblance of a controversy between him and said defendants.

139 Second. Because the said A. G. Sharp was not a party to the suit at the commencement thereof.

Third. Because the said A. G. Sharp is not now and never has been a party plaintiff inasmuch as he has not complied with the terms and conditions precedent upon which he was permitted to become a party plaintiff thereto, in this, that he had not at the time of the presentation and filing of said petition for removal signed and united in the bond of the plaintiffs for the prosecution of this suit in the said chancery court of Tennessee, as required by the terms of the order permitting him to become a party.

Fourth. Because the said A. G. Sharp did not become a party to the said suit before the trial thereof.

Fifth. Because there is no matter in dispute between the said A. G. Sharp, citizen of Tennessee, plaintiff, and the said Richmond and Danville Railroad Company and The Richmond and West Point Terminal Railway and Warehouse Company, citizens of Virginia, defendants, which exceeds, exclusive of interest and costs, the sum or value of $2,000.

Sixth. Because the controversy between the said Sharp and the defendants is not one of which this honorable court could take original cognizance.

Seventh. Because, a decree *pro confesso* having been entered against The Richmond and Danville Railroad Company, defendant, before the filing of the petition for removal, the removal was too late.

Eighth. Because the petition and affidavit were both sworn to January 18th, 1889, at which time, as appears by the record, a decree *pro confesso* had been entered and was then in force against the said Richmond and Danville Railroad Company.

140 Ninth. Because certain of the parties plaintiff and certain of the parties defendant were at the time of the filing of the petition for removal citizens of the State of Tennessee.

Tenth. Because certain of the parties plaintiff were at the time of filing the bill and still are aliens.

Eleventh. Because it appears upon the face of the petition for removal and the record that the suit is one of which this court cannot obtain jurisdiction by removal under the last clause of the second section of the act of March 3d, 1887, and that the order of removal is *coram non judice* and void.

A true copy.

[The Seal of the Circuit Court, District of East Tenn.]

Attest: H. H. TAYLOR, *Clerk*,
By J. T. CARTER, *D. C.*

141 [Endorsed:] No. 4417. Ex. "B." Thouron *et al. vs.* E. T., Va. & Ga. R'y Co. *et al.* Motion to remand.
[Stamped:] Filed Apr. 1, 1889. H. H. Taylor, U. S. cir. c't, c'lk.

142 No. 4417.

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

NICHOLAS THOURON *et al.*
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILWAY COMPANY *et al.*

And now, March 8th, A. D. 1889, come the plaintiffs, Nicholas Thouron, Frederick J. Burt, trading as Frederick Burt & Co.; William J. Barr, and Edmund Allen, and, by protestation, not confessing or acknowledging the petition to remove this cause from the chancery court of Knox county, Knoxville, Tennessee, to be true, for plea to the jurisdiction of this court, say—

That this court ought not to take further cognizance of this suit (No. 4417), because this suit does not involve a dispute or controversy between a plaintiff citizen of Tennessee, in whose court the suit was brought, to wit, A. G. Sharp, and a defendant citizen of the State of Virginia, to wit, The Richmond and West Point Terminal

Railway and Warehouse Company or The Richmond and Danville Railroad Company; and this they are ready to verify.

And, for further plea to the jurisdiction of this court, said plaintiffs say—

143 That there is no matter in dispute between A. G. Sharp, plaintiff, and the said Richmond and West Point Terminal Railway and Warehouse Company or The Richmond and Danville Railroad Company, citizens of the State of Virginia, defendants, which exceeds, exclusive of interest and costs, the sum or value of $2,000; and this they are ready to verify.

And, for further plea to the jurisdiction of this court, said plaintiffs say—

That the said A. G. Sharp was improperly and collusively joined as a party plaintiff to this suit for the purpose of creating a case removal to this court from said State court, and that he has united with these plaintiffs without their request or consent and not for the *bona fide* purpose of prosecuting said suit, but merely in form and at defendants' request so as to enable defendants to oust said State court of its jurisdiction and to remove said suit to this court; and this they are ready to verify.

And, for further plea to the jurisdiction of this court, the plaintiffs say—

That of the original plaintiffs at the time the bill was filed and this controversy begun Nicholas Thouron, William J. Barr, and Edmund Allen were then and still are citizens of the State of Pennsylvania, and Charles Sligo de Pothonier, trading as C. Sligo de Pothonier & Co., and Frederick J. Burt, trading as Frederick Burt & Co., were then and still are aliens and subjects of the Queen of Great Britain, and the East Tennessee, Virginia and Georgia Railway Company and E. J. Sanford were then and still are citizens of the State of Tennessee, and the other parties defendant were then and still are citizens of the States of Virginia and New York; and this they are ready to verify.

And, for further plea to the jurisdiction of this court, these plaintiffs say—

That it is not true that from local influence or prejudice that the defendants will not be able to obtain justice in the said State court; and this they are ready to verify.

Wherefore plaintiffs pray that the order of removal heretofore made be vacated, and that this suit be remanded to the chancery court of Knoxville, Tennessee.

144 UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *ss:*

Nicholas Thouron, being duly sworn, says that the foregoing pleas are not interposed for delay and are true in point of fact.

NICHOLAS THOURON.

Sworn and subscribed to before me this 8th day of March, A. D. 1889.

SAMUEL PAUL,
U. S. Commissioner.

We hereby certify that in our opinion the foregoing pleas are well founded in point of law.

A true copy.

[The Seal of the Circuit Court, District of East Tenn.]

Attest: H. H. TAYLOR, *Clerk*,
By J. T. CARTER, *D. C.*

145 [Endorsed:] No. 4417. Ex. "C." Thouron *et al. vs.* E. T., Va. & Ga. R'y Co. *et al.* Pleas to remand.
[Stamped:] Filed Apr. 1, 1889. H. H. Taylor, U. S. cir. c't cl'k.

Endorsed on cover: E. Tennessee C. C. U. S. No. 1263. The Richmond & West Point Terminal Railway and Warehouse Company, appellant, *vs.* Nicholas Thouron, Frederick J. Burt, trading as Frederick Burt & Co.; William J. Barr, Edmund Allen, and Edmund P. Dwight. Filed October 1, 1889.

Office Supreme Court U. S.
FILED.
FEB 3 1890
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 1263.

THE RICHMOND AND WEST POINT TERMINAL RAILWAY AND WAREHOUSE COMPANY, APPELLANT,

vs.

NICHOLAS THOURON, ET AL., APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

Brief for Appellant on the Motion of Appellees to Dismiss the Appeal for Want of Jurisdiction.

Appellant respectfully refers to the third division of the brief filed in the case of the Richmond and Danville Railroad Company against the same defendants, No. 1262.

HOADLEY, LAUTERBACH & JOHNSON,
TAYLOR & HOOD,
BARROW & THOMAS, *For Appellant.*

POPE BARROW,
Of Counsel.

No. 1263. *October Term, 1889.*

Supreme Court of the United States.

The Richmond and West Point Terminal Railway and Warehouse Company, Appellant,

vs.

Nicholas Thouron *et al.*, Appellees.

Appeal from the Circuit Court of the United States, for the Eastern District of Tennessee.

BRIEF FOR APPELLEES ON THEIR MOTION TO DISMISS THE APPEAL FOR WANT OF JURISDICTION.

INGERSOLL & PEYTON,
CHARLES M. DA COSTA,
SAMUEL DICKSON,
For Appellees.

Allen, Lane & Scott, Printers, 229-231-233 South Fifth Street, Philadelphia.

Supreme Court of the United States.

The Richmond and West Point Terminal Railway and Warehouse Company, Appellant,

vs.

Nicholas Thouron et al., *Appellees.*

October Term, 1889.

No. 1263.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF TENNESSEE.

BRIEF FOR APPELLEES ON THEIR MOTION TO DISMISS THE APPEAL FOR WANT OF JURISDICTION.

The facts in this case are substantially similar to the ones in the case of The Richmond and Danville Railroad Company against the same defendants, No. 1262.

The petition to remove was made, however, in this case by the Richmond and West Point Terminal Railway and Warehouse Company.

The points relied on by the appellees on this motion are the same as those contained in their brief submitted in No. 1262, which are not repeated here, but to which reference is hereby respectfully made.

INGERSOLL & PEYTON,
CHARLES M. DA COSTA,
SAMUEL DICKSON,
For Appellees.